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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~763~~ 66

NORTHPORT POWER AND LIGHT COMPANY,
APPELLANT,

vs.

ROLAND H. HARTLEY, AS GOVERNOR OF THE STATE OF WASHINGTON, AND JOHN H. DUNBAR, AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

FILED MARCH 26, 1930

(34,894)

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IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION.

No. 402. In Equity

NORTHPORT POWER AND LIGHT COMPANY, a Corporation, Plaintiff,

vs.

ROLAND H. HARTLEY, as Governor of the State of Washington, and John H. Dunbar, as Attorney General of the State of Washington, Defendants

BILL OF COMPLAINT—Filed Sept. 9, 1929

To the Honorable Judges of the District Court of the United States for the Western District of Washington, Southern Division, sitting in equity:

The Northport Power and Light Company, a corporation, organized and existing under the laws of the State of Washington, with its principal place of business at Northport, Stevens County, Washington and a citizen of said state, brings this bill against Roland H. Hartley as Governor of the State of Washington, and John H. Dunbar as attorney general of the State of Washington, citizens of the United States and the State of Washington, and residents of the Southern Division of the Western District of Washington.

And thereupon the plaintiff brings its complaint and shows unto Your Honors as follows:

I

That the plaintiff is a corporation organized and existing under the laws of the State of Washington, and has paid its last annual license fees due said state, and brings this bill against said Roland H. Hartley as governor of the State of Washington, and John H. Dunbar as the duly

elected, qualified and acting attorney general of the State of Washington.

[fol. 3]

II

That the value of the matters in dispute herein between the plaintiff and the defendants exceeds the sum of twenty-five thousand dollars ($25,000.00).

The jurisdiction of this Honorable Court is invoked because of and by reason of the Federal question involved in this suit and equity jurisdiction, and because plaintiff has no adequate remedy at law.

III

That the plaintiff is now, and ever since the year 1917 has been, the owner of certain right of way easements and franchises within the County of Stevens and State of Washington on which there has been constructed its transmission lines and power station for the purpose of conveying electrical energy from a point three miles north of the International Boundary Line in British Columbia, Canada to points seven or more miles distant in the County of Stevens, State of Washington.

That said right of way deed, easements and franchises are herein set forth as Exhibit I and made a part of this bill.

That all right of way easements and franchises are necessary for the purpose of transmitting said electrical energy in foreign commerce.

IV

That the plaintiff is incorporated under the laws of the State of Washington and its articles of incorporation are hereto attached as Exhibit 2, and made a part of this bill.

V

That the plaintiff is engaged in foreign commerce, in this that it purchases all of its electrical energy from the West Kootenay Power and Light Company, Ltd., a corporation of Canada, and transmits the same from a point at [fol. 4] and near Silica, British Columbia, Canada, some

three miles north of the International Boundary Line, over continuous transmission lines to consumers in the Town of Northport and other points in Stevens County, Washington and said electrical energy is purchased in Canada and sold and consumed in the United States.

VI

That the plaintiff now owns and holds a franchise from the town of Northport, Washington, authorizing it to sell and distribute electric current or energy to the inhabitants thereof, and it has at all times since 1917 been engaged and now is so engaged, and the electric current so sold and distributed is generated in the Dominion of Canada and transmitted across the International Boundary Line into the State of Washington for the purpose of such sale and distribution.

VII

That plaintiff is a domestic corporation of Washington, and the majority of its issued capital stock is owned by the West Kootenay Power and Light Company, Ltd. of Canada, an alien corporation.

That Article II, Section 33, of the State Constitution of Washington purports by its terms to prohibit the ownership of lands by aliens other than mineral and the necessary land for mills and machinery to be used in the development thereof and the manufacture of products therefrom, and states that for the purpose of inhibition that every corporation, the majority of whose capital stock is owned by aliens, shall be considered an alien for the purposes of the inhibition.

VIII

That there was enacted by the legislature of the State of Washington in the year 1921 an act entitled "An Act Relating to the Rights and Disabilities of Aliens With Respect to Lands, Providing for Forfeitures in Certain Cases, Prescribing Penalties, and Repealing Sections 135 and 136 of Pierce's Code, 8775 and 8776 of Remington and Ballinger's Annotated Codes and Statutes of Washing— and [fol. 5] Ballinger's Annotated Codes and Statutes of Washington", approved March 8, 1921.

IX

That the defendants, Roland H. Hartley as governor and John H. Dunbar as attorney general of the State of Washington, have threatened to and will wrongfully and illegally enfor-e said act in each *an* and all of its terms, and the whole thereof, against this plaintiff because of the fact that the majority of the capital stock of the plaintiff corporation is alien in ownership, and that the plaintiff corporation continues to operate its business in the customary and usual manner of utilizing easements and rights of way to land in the State of Washington, and will forfeit or attempt to forfeit all of said leasehold interests and franchises and the whole thereof and all the improvements thereon, and will attempt to escheat the same to the State of Washington, by the institution and prosecution of a suit at law in the Courts of Washington, as a result of which plaintiff will suffer great and irreparable loss and damage, and that plaintiff has no adequate remedy at law but is relievable only in a court of equity.

X

That said act of the legislature and said section of the Constitution of the State of Washington are in contravention of and repugnant to Clause 3, Section 8, Article I, of the United States Constitution relative to the regulation of commerce with foreign nations, and Section 10, Article I, of the United States Constitution providing that "no state shall * * * pass any law * * * impairing the obligation of contracts", and Section 1 of the Fourteenth Amendment to the United States Constitution relative to due process of law and equal protection to the rights of citizens; and the treaty of 1815 between the United States and Great Britain as extended by the treaty of 1827; and the threatened action of the attorney general, if executed, would be in violation of the aforesaid constitutional provisions, in that it would interfere with and destroy foreign commerce, would violate and render nugatory franchises granted to the plaintiff, and would deprive plaintiff, [fol. 6] — equal protection of the law, and would deprive it of its property without due process of law, and plaintiff also claims the protection of Section 3 relative to the dep-

rivation of property without due process of law, Section 12 relative to the prohibition of special privileges and immunities, and Section 23 relative to impairing the obligations of contracts, all said sections being embraced within and a part of Article 1 of the State Constitution of Washington, and the aforesaid treaty.

XI

That plaintiff is the owner of mining properties in the County of Stevens and as such owner is now engaged in the development of the same, and requires the use of electrical energy in the development of said properties, and plaintiff claims the protection of the proviso of Section 33, Article 2, of the State Constitution with regard to mineral lands and "necessary lands for mills and machinery to be used in the development thereof, and the manufacture of products therefrom" so long as it shall own and operate mining properties in the State of Washington and utilize said electrical energy in the development thereof, and the manufacture of products therefrom.

XII

That if plaintiff is not permitted to continue to own right of way easements over land and franchise to occupy highways, streets and alleys on which to construct transmission lines and sub-stations, it will be prohibited from engaging in foreign commerce and will suffer great and irreparable loss.

Plaintiff has no adequate remedy in the premises by the strict rules of law, and can obtain relief only in a court of equity where matters and things of the kind and character hereinbefore stated are perfectly cognizable and reliable, and to the end that plaintiff may have relief, which it can only obtain in a court of equity, it prays:

[fol. 7] 1. That Roland H. Hartley as governor of the State of Washington and John H. Dunbar as attorney general of the State of Washington be enjoined and restrained, provisionally, preliminarily and perpetually, by the order and injunction of this court from bringing, directly or indirectly, and permitting to be brought, directly or indirectly,

any proceedings at law or in equity for the purpose of enforcing said Section 33, Article II of the Constitution of the State of Washington and said act of the legislature of the State of Washington above mentioned, against this plaintiff so long as this plaintiff shall be engaged in the business of transmitting electrical energy in foreign commerce from a point in Canada to points in the State of Washington, and that an order to show cause issue herein upon application to the plaintiff herein directed to the above named defendants requiring them to show cause why a temporary injunction should not issue as prayed for herein, and that a temporary restraining order may issue pending the hearing of said show cause order.

2. That upon the hearing, the aforesaid section of the State Constitution and the aforesaid act passed by the legislature of the State of Washington be declared to be in contravention of and repugnant to Clause 3, Section 8, Article I, of the United States Constitution relative to foreign commerce, Section 10, Article I, of the United States Constitution providing that "no state shall * * * pass any law * * * impairing the obligation of contracts", and Section 1 of the Fourteenth Amendment to the United States Constitution relative to due process of law and equal protection to the rights of citizens thereto, and that a perpetual injunction be issued restraining the enforcement thereof as hereinbefore prayed for.

[fol. 8] 3. That a writ of subpœna may issue to the defendant requiring him to answer this bill of complaint fully and truthfully, but not on oath, an oath hereby being waived, and that further and general relief be granted as the nature of the plaintiff's case may require or to equity may seem meet.

W. Lon Johnson, O. C. Moore, Attorneys for Plaintiff.

Duly sworn to by C. B. Smith. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 9] EXHIBIT 1 TO BILL OF COMPLAINT

39288

Right of Way Deed

This indenture made the twenty-fourth day of September, A. D. 1917, between Chris Knutson, a single man, of the state of Washington, hereinafter called the Grantor, of the first part, and the Northport Power and Light Company, a corporation organized existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of Sixty-two Dollars and fifty cents ($62.50), paid by said Grantee to said Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances over, across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the north boundary of Lot 15, in Section 3, Twp. 40 N., Range 39 E. W. M., 479 feet east of the northwest corner of said Lot 15.

Thence S. 26 degrees 15' E. 471.8 feet as surveyed through Lots 15 and 9 of said Sec. 3, to a point on the south line of said Lot 9, 1,130 feet east of the southwest corner of Lot 9, with a strip of land forty-nine and one-half feet in width on both sides of the line so described, containing 3.34 acres more or less.

It is the intention of this deed to convey the above said strip of land through the Great Republic Mining lodge and the Southern Cross lode claim.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing, and maintaining its said

Power Lines and for any and all other purposes; also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantor, for himself, his heirs and assigns, hereby releases the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

In witness whereof the said Grantor of the first part, has hereunto set his hand and seal the day and year first above written.

Chris Knutson.

STATE OF WASHINGTON,
County of Stevens, ss:

On this 28th day of September A. D. 1917, before me personally appeared Chris Knutson, a single man, to me known to be the individual described in, and who executed the within and foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. E. Allison, Notary Public for the State of Washington, Residing at Northport, Wash. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1929.)

Filed for record at the request of F. L. Buel, Northport, Oct. 20, 1917, at 3:09 P. M. Recorded Oct. 24, 1917. Earle T. Gates, County Auditor. Dorot-y Dexter, Deputy.

[fol. 10] 39287

Right of Way Deed

This Indenture made the eighteenth day of October A. D. 1917, between Rasmus Malde, bachelor, and Harry W. Bodey, bachelor, of the State of Washington, hereinafter called the grantors, of the first part and the Northport Power & Light Company, a corporation organized and

existing under and by virtue of the laws of the state of Washington, hereinafter called the Grantee of the second part, Witnesseth:

In consideration of the sum of two hundred dollars ($200.00) paid by said Grantee to said Grantors, the receipt whereof is hereby acknowledged, the Grantors do hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in wi-th in Township Forty (40) North, Range Thirty-nine (39) East W. M. in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the south boundary line of lot 15 in Section 3, Township 40 North, Range 39 E. W. M. to a point 1,130 feet east of the southwest corner of lot nine; thence from last above named point S. 26 degrees and 15' minutes E. as surveyed through, said lot 9 of said section 3 across the southern cross mining lode claim.

The said strip conveyed being forty-nine and one-half feet on each side of the said center line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said power line and for any and all other purposes; also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantors, for themselves, their heirs and assigns, hereby release the said Grantee, its successor and assigns, from any and all claims for damages resulting to the lands in this deed described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

In witness whereof the said Grantors, of the first part, have hereunto set their hands and seals the day and year first above written.

Rasmus Malde, Harry W. Bodey.

STATE OF WASHINGTON,
County of Stevens, ss:

On this 19th day of October A. D. 1917 before me personally appeared Rasmus Malde, bachelor, and Harry W. Bodey, bachelor to me known to be the individuals described in, and who executed the within and foregoing instrument, each and severally, and acknowledged the said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

John H. Bowers, Notary Public for the State of Wash., Residing at Northport, Wash. My commission expires March 11th, 1921. (Seal John H. Bowers, Notary Public, State of Washington. Commission expires Mar. 11, 1921.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3:07 o'clock P. M. Recorded Oct. 23, 1917. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 11] 39286

This indenture made the 16th day of October, A. D. 1917, between F. H. Kinsell and Mary C. Kinsell, his wife, of the State of Washington, hereinafter called the Grantors, parties of the first part, and the Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, party of the second part, witnesseth:

In consideration of the sum of One ($1.00) Dollars paied by said grantee to said grantors, the receipt whereof is hereby acknowledged, the grantors do hereby convey and quit claim unto said grantee, its successors and assigns, all their right, title and interest in and to the follows:

The full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in width in Township 40 North, Range 39, East W.M., in Stevens County, Washing-

ton, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the North boundary of the South Half (S.½) of the Southeast Quarter (S.E.¼) of Section Three (3) Township Forty (40) North, Range Thirty-nine (39) E. W. M. 1,130 feet East of the Northwest corner;

Thence from said last above named point S. 26 degrees 15′ E. 1,471.8 feet as surveyed through the South Half (S. ½) of the Southeast Quarter (S. E. ¼) of Section Three (3), to a point on its South boundary 848.65 feet West of the corner to Sections Two (2) Three (3), Ten (10) and Eleven (11), thence S. 26 degrees 15′ E. through the Northeast Quarter (N.E.¼) of the N.E.¼ of Section Ten (10), 1,471.8 feet to a point on its South boundary 195.3 feet from the Southeast corner, containing 6.69 acres more or less.

Said strip of land being forty-nine and one-half (49½) feet on each side of the said center line.

It is also intended that the above description should include the right, privilege and authority at all times to enter into and upon the said strip of land for the purpose of constructing, repairing and maintaining grantee's power line and for any and all other purposes in connection therewith, together with the right and privilege of cutting and removing from said strip of land all timber and brush.

The validity of this deed is contingent upon the conveyance of said right of way to grantee by L. Oriard and wife.

Should said right of way be vacated at any time, the property right herein conveyed shall revert to said grantors.

In Witness Whereof the said grantors have hereunto set their hands and seals the day and year first above written.

F. H. Kinsell (Seal), Mary C. Kinsell (Seal).

STATE OF WASHINGTON,
County of Spokane, ss:

On this 16th day of October A. D. 1917, before me personally appeared F. H. Kinsell and Mary C. Kinsell, his wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal, this 16th day of October A. D. 1917.

E. Ben Johnson, Notary Public in and for the State of Washington, Residing at Spokane, Washington. (Seal E. Ben Johnson, Notary Public, State of Washington. Commission expires Mar. 3, 1918.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3:06 P. M. Recorded Oct. 23, 1917. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 12] 39292

Right of Way Deed

This indenture made the twenty-fourth day of September, A. D. 1917, between L. Oriard, and Louise Oriard, his wife, of the State of Washington, hereinafter called the Grantors, of the first part, and Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, Witnesseth:

In consideration of the sum of One hundred and five dollars ($105.00), paid by said Grantee to said Grantors, the receipt whereof is hereby acknowledged, the Grantors, do hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M. in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the North boundary of the S. ½ of the S. E. ¼ of Sec. 3, Twp. 40 N., Range 39 E. W. M. 1130 ft. east of the northwest corner.

Thence from said last above named point S. 26 degrees 15′ E. 1471.8 ft. as surveyed through the S. ½ of the S. E. ¼ of Sec. 3, to a point on its South boundary 848.65 ft. west of the corner to Secs. 2, 3, 10 and 11,—thence S. 26 degrees 15′ E. through the N. E. ¼ of the N. E. ¼ of Sec. 10, 1,471.8

ft. to a point on its south boundary 195.3 ft. from the southeast corner; containing 6.69 acres more or less.

The said strip conveyed being forty-nine and one-half feet on each side of the said centre line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all other purposes; also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantors, for themselves, their heirs and assigns, hereby release the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed and described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

In witness whereof the said Grantors of the first part, have hereunto set their hands and seals the day and year first above written.

L. Oriard, Louise E. Oriard.

STATE OF WASHINGTON,
County of Spokane, ss:

On this 15th day of October A. D. 1917, before me personally appeared L. Oriard, and Louise E. Oriard, his wife, to me known to be the individuals described in, and who executed the within and foregoing instrument, and each and severally acknowledged the said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

James W. Boothe, Notary Public for the State of Washington, Residing at Spokane. (Seal James W. Boothe, Notary Public, State of Washington. Commission expires Feb. 23, 1918.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3:13 P. M. Recorded Oct. 24, 1917. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 13] 39293

Right of Way Deed

This indenture made the twenty-fourth day of September, A. D. 1917, between John Leaden and Bertha M. Leaden, his wife, of the State of Washington, hereinafter called the Grantors, of the first part, and the Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of Twenty-five Dollars ($25.00), paid by said Grantee to said Grantors, the receipt whereof is hereby acknowledged, the Grantors do hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the north boundary of Lot 15, in Sec. 3, Twp. 40 N. Range 39 E. W. M., 479 ft. east of the northwest corner of said Lot 15.

Thence from said last above named point S. 26 degrees 15' E. 1471.8 ft. as surveyed through Lots 15 and 9 of said Sec. 3, to a point 1130 ft. east of the southwest corner of Lot 9; containing 3.34 acres more or less, except 1.15 acres contained in the location of the great Republic mining claim.

The said strip conveyed being forty-nine and one-half feet on each side of the said center line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all other purposes; also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantors, for themselves, their heirs and assigns, hereby release the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed described and conveyed by reason of the location, construction, maintenance and operation of its said power lines.

In witness whereof the said Grantors, of the first part, have hereunto set their hands and seals the day and year first above written.

John Leaden, Bertha E. Leaden.

STATE OF WASHINGTON,
County of Stevens, ss:

On this 2nd day of October A. D. 1917, before me personally appeared John Leaden, and Bertha E. Leaden, his wife, to me known to be the individuals described in, and who executed the within and foregoing instrument, each and severally, and acknowledged the said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. E. Allison, Notary Public for the State of Washington, Residing at Northport. My commission expires May 12th, 1920. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1920.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3:14 P. M. Recorded Oct. 24, 1927. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 14] EXHIBIT I

39778

This Indenture made in duplicate the Twenty-fifth day of October in the year of our Lord One thousand nine hundred and seventeen. Between:—Nels Alfred Manson, of the City of Vancouver, in the Province of British Columbia, Hotel Keeper, and his wife, Annie Manson, Married Woman, hereinafter called the Grantors, Of the First Part, and The Northport Power & Light Company, a corporation

organized and existing under and by virtue of the laws of the State of Washington, one of the United States of America, hereinafter called the Grantee, Of the Second Part.

Whereas it has been agreed subject to the terms and conditions hereinafter following between the above-named parties that the Grantor shall sell and the Grantee shall purchase the right to construct and maintain a power line over the lands of the above named Grantors.

Now Therefore These Presents Witnesseth that in consideration of the sum of One dollar ($1.00) and other valuable considerations now paid by the said Grantee to the said Grantors (the receipt whereof is hereby acknowledged) the Grantors do hereby grant, sell, convey and assign unto the said Grantee, its successors and assigns the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its power lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances over, across and upon a strip of land ninety-nine (99) feet in width, in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, in the State of Washington, one of the United States of America, the center line of which strip is surveyed and marked upon the ground and is described as follows: Beginning at a point on the international boundary line One hundred and forty-two and forty-four one-hundredths (142.44) feet East of the Northwest corner of Lot Twelve (12), in Section Three (3), Township Forty (40), North, Range Thirty-nine (39) E. W. M., thence from the said last named point south Twenty-six degrees fifteen minutes (26 degrees 15') East Two thousand three hundred and eighty-five feet (2385) feet through Lots Twelve (12), Thirteen (13) and Fourteen (14) of the said Section Three (3), to a point on the said boundary line of the said Lot Fourteen (14) a distance of Four hundred and seventy-nine (479) feet, East of the Southwest corner of the said Lot Fourteen (14) and represented by the survey as made by the above named Grantee as containing Five and forty-two one-hundredths (5.42) acres more or less, as shown by a plan of the survey of the said strip a blueprint of which is hereunto annexed. Subject however to such reservations and provisos as are hereinafter provided, that is to say, that the said Grantors shall have the right to enter upon

the said strip and to cross the same from time to time and at all times, and to enter upon the said lands and construct such fences, dykes or draining ditches as he may from time to time and at any time see fit.

Provided Further However that the Grantee, its successors and assigns shall at all times have the right, privilege and authority to enter into and upon the said strip of land for the purpose of constructing, repairing and maintaining its said power lines, and for any other purpose in connection with the said power lines.

Provided Further that the said Grantee shall have the right and privilege to cut and remove from the said strip of lands all timber and brush necessary to be removed for the purpose of the proper construction and maintenance of the said power lines.

And the Grantors for themselves, their heirs, executors, administrators and assigns Do Hereby Release the said Grantee its successors and assigns of and from any and all [fol. 15] claims for damages resulting from the said strip of land in this Deed described and conveyed by reason of the location and construction, maintenance and operation of its said lines.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and date first above written.

Nels Alfred Manson (Seal). Annie Manson, by Her Attorney-in-Fact, Nels Alfred Manson (Seal).

Signed, sealed, and delivered in the presence of G. G. McGerr, Barrister, Vancouver, B. C.

Filed for record at the request of Northport Power & Light Co., Nov. 13, 1917, at 3:55 P. M. Recorded Nov. 15, 1917. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 16] EXHIBIT I.

Right of Way Deed

This indenture made the 3rd day of October A. D. 1917, between Mary Catherine Lee & William I. Lee wife & Husband of the State of Washington, hereinafter called the

Grantor, of the first part and the Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the Second Part, Witnesseth:

In consideration of the sum of One hundred & Seventy-five Dollars $175.00, paid by the said Grantee to said Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby grant, sell, convey and confirm unto the said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is sirveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the North Boundary of the S. E. ¼ of the N. E. ¼ of Sec. 10, T. 40., R. 39 E. W. M., 195.3 ft. West of the Northeast corner thereof.

Thence S. 26 degrees 15′ E. through the S. E. ¼ of the N. E. ¼ of said Section 10 and the S. W. ¼ of the N. W. ¼ of Section 11, said Township and Range, a distance of 1471.8 ft. to a point on the south boundary of the S. W. ¼ of the N. W. ¼ of said Section 11, 453.7 ft. east of the ¼ Section corner between Sections 10 and 11; Thence S. 26 degrees 15′ E. 1285.3 ft. and Thence S. 34 degrees 15′ E. 202.35 ft., through the N. W. ¼ of the S. W. ¼ of said Section 11 to a point on the South boundary of said N. W. ¼ of S. W. ¼ 183.9 ft. West of the S. E. corner thereof, with a strip of land 49.5 ft. in width on both sides of the line so described containing 6.73 acres more or less.

Also granting unto said Grantee, its successors and assigns the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all other purposes; also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantor, for herself, her heirs and assigns, hereby releases the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

To have and to hold said described strips of land to said Grantee, its successors and assigns, so long as same is used as and for Power Lines or Power Line and no longer.

In witness whereof the said Grantor of the first part has hereunto set her hand and seal the day and year first above wirtten.

Mary Catharine Lee (Seal), William I. Lee (Seal).

[fol. 17] STATE OF WASHINGTON,
County of Stevens:

On this 3rd day of October A. D. 1917, before me personally appeared Mary Catherine Lee & William I. Lee, wife & husband to me known to be the individuals described in, and who executed the within and foregoing instrument, and acknowledged the said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above mentioned.

C. E. Allison, Notary Public for the State of Washington, Residing at Northport. My commission expires May 12, 1920. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1920.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3 28 P. M. Recorded Oct. 24, 1917. Book 54, Page 218. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 18] EXHIBIT I

39290

Right of Way Deed

This indenture, made the twenty-fourth day of September, A. D. 1917, between Joseph Vanash, a single man, of

the State of Washington, hereinafter called the Grantor, of the first part, and the Northport Power & Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of Two hundred and ten Dollars ($210.00) paid by said Grantee to said Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over across and upon *a* a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the north boundary of the S. ½ of the S. W. ¼ of Sec. 11, Twp. 40 N., Range 39, E. W. M., 1136.1 ft. east of the northwest corner.

Thence from said last above named point S. 34 degrees 15′ E. 1596.9 ft. as surveyed through the S. ½ of the S. W. ¼ to a point on its south boundary 605.1 ft. west of the ¼ Sec. corner between Secs. 11 and 14; containing 3.62 acres more or less.

The said strip conveyed being forty-nine and one-half feet on each side of the said center line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all purposes; also grantng the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantor, for himself, his heirs and assigns, hereby releases the said grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

In witness whereof the said Grantor of the first part, has hereunto set his hand and seal the day and year first above written.

Joseph (his X mark) Vanash.

STATE OF WASHINGTON,
County of Stevens, ss:

On this 4th day of October, A. D., 1917 before me personally appeared Joseph Vanash, a single man, to me known to be the individual described in, and who executed the within and foregoing instrument and acknowledged the said instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. E. Allison, Notary Public for the State of Washington, Residing at Northport. My commission expires May 12, 1920. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1920.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3:11 P. M. Recorded Oct. 24, 1917. Book 54, page 213. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 19] EXHIBIT I

39289

Right of Way Deed

This indenture made the 2nd day of October A. D. 1917, between the Kendrick Mercantile Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantor, of the first part, and the Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of Fifty-Dollars, paid by said Grantee to said Grantor, the receipt whereof is hereby ac-

knowledged, the Grantor does hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the north boundary of the N. E. ¼ of the N. W. ¼ of Sec. 14, Twp. 40 N., Range 39 E. W. M., 605.1 ft. west of the ¼ sec. corner between Secs. 11 and 14, thence from said last above named point S. 34 degrees 15′ E. 268.3 ft.,—thence S. 47 degrees 23′ E. 617.6 ft. as surveyed through the N. E. ¼ of the N. W. ¼ to a point on its east boundary 639.5 ft. south of the said ¼ Sec. corner; containing 2.0 acres more or less.

The said strip conveyed being forty-nine and one-half on each side of said center line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all other purposes; Also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantor, for itself, its successors and assigns, hereby releases the said Grantee, its successors and assigns, from any and all claim for damages resulting to the lands in this deed described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

To have and to hold said described strips of land to said Grantee, its successors and assigns, so long as same is used as and for Power Lines or Power Line and no longer.

In witness whereof the said Grantor Corporation, in pursuance of a Resolution of its Board of Directors duly passed and entered on its books, has caused this instrument to be signed and the corporate seal to be affixed by its proper and

duly authorized officers, the day and year first above written.

Kendrick Mercantile Company, By C. S. Slawson, President. J. H. Stroh, Secretary. (Seal Kendrick Mercantile Co., Northport, Wash. Incorporated 1889.)

[fol. 20] State of Washington,
County of Stevens, ss:

On this 2nd day of October A. D. 1917, before me personally appeared C. S. Slawson and J. H. Stroh to me known to be the President and Secretary, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. E. Allison, Notary Public for the State of Washington, Residing at Northport. My commission expires May 12th, 1920. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1920.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3:10 P. M. Recorded Oct. 24, 1917. Book 54, page 212. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 21] Exhibit I

41386

This Indenture, Made this twenty-fourth day of December A. D. 1917, between the Upper Columbia Company, a corporation organized and existing under and by virtue of the laws of the State of Washington hereinafter called the Grantor, of the first part, and the Northport Power and Light Company, a corporation organized and existing under

and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, Witnesseth:

In consideration of the sum of one thousand six hundred and fifteen dollars and fifty cents ($1615.50), paid by said Grantee, to said Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over across and upon a strip of land ninety-nine feet in width, being 49.5 feet on each side of said centre line, in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the centre line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the west boundary line of the Southeast quarter (S. E. ¼) of the Northeast quarter (N. E. ¼), Section fourteen (14), Township forty (40) North, Range thirty-nine (39) E. W. M., 557 feet, south of the northwest corner of said southeast quarter (S. E. ¼) of the Northeast quarter (N. E. ¼), thence south 47 degrees 23′ East 1808.5 feet through the said southeast quarter (S. E. ¼) of the northeast quarter (N. E. ¼) and the northeast quarter (N. E. ¼) of the southeast quarter (S. E. ¼) of said Section fourteen (14), to a point on the section line between Sections thirteen (13) and fourteen (14), 482.9 feet south of the quarter section corner, containing 4.11 acres, more or less.

Thence from said last above named point S. 47 degrees 23′ East 2550.4 feet; thence following a 5 degree curve to the right 528.3 feet through the southwest quarter (S. W. ¼) of Section Thirteen (13), to a point on the south boundary line of said Section thirteen (13) 436 feet west of the quarter section corner between Sections thirteen (13) and twenty-four (24), containing 7.00 acres, more or less.

Thence from said last above named point, following a 5 degree curve to the right, the course of whose tangent at this point is S. 15 degrees 09′ East, 233 feet, thence S. 9 degrees 19′ East, 5098.4 feet through Section twenty-four (24) to a point on the south boundary line of said section 433.6 feet east of the quarter section corner between Sections

twenty-four (24) and twenty-five (25); containing 12.24 acres, more or less.

Thence beginning at a point on the north boundary line of the southwest quarter (S. W. ¼) of the northeast quarter (N. E. ¼) of Section Twenty-five (25) 650 feet east of the northwest corner of said southwest quarter (S. W. ¼) of the northeast quarter (N. E. ¼) thence S. 9 degrees 19′ East through the said southwest quarter (S. W. ¼) of the northeast quarter (N. E. ¼) 1337.6 feet to a point on the south boundary line of said southwest quarter (S. W. ¼) of the northeast quarter (N. E. ¼) 866.6 feet east of the southwest corner thereof; containing 3.04 acres, more or less.

Thence beginning at a point on the North boundary line of Lot four (4) in Section thirty-six (36) 33.84 feet east of the northwest corner of said Lot, thence S. 9 degrees 19′ East, 371.6 feet; thence following a 5 degree curve to the left for 390 feet; thence S. 28 degrees 49′ East, 1563.9 feet through said Lot four (4) to the north bank of the Columbia River; containing 5.27 acres, more or less.

[fol. 22] Also the following described strips of land in said Township Forty (40) North, Range thirty-nine (39) E. W. M., to wit:

Beginning at the southwest corner of Lot six (6) in Section twenty-five (25), thence north along the west boundary line of said Lot, 423, feet; thence S. 9 degrees 19′ East, 428.7 feet to the south boundary line of said Lot; thence West 69.4 feet to the point of beginning; containing 9.34 acres, more or less.

Beginning at the northeast corner of Lot seven (7), Section twenty-five (25) thence South 144.5 feet to the southeast corner of said Lot; thence west 11.36 feet; thence N. 9 degrees 19′ W. 146.43 feet to the north boundary line of said Lot; thence East 28.5 feet to the point of beginning; containing 0.07 acres, more or less.

Beginning at the northwest corner of Lot eleven (11) Section twenty-five (25) thence South 144.5 feet to the southwest corner of said Lot; thence East 84.04 feet; thence N. 9 degrees 19′ west, 146.43 feet to the north boundary line of said Lot; thence West 69.4 feet to the point of beginning; containing 0.22 acres, more or less.

Beginning at the northeast corner of Lot 1, Section thirty-six (36) thence South 69.27 feet, thence N. 9 degrees 19' West, 70.2 feet to the north boundary line of said Lot; thence East 11.36 feet to the point of beginning; containing 0.02 acres, more or less.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all other purposes; in connection therewith, also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantor, for itself, its successors and assigns, hereby releases the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

To have and to hold said described strips of land to said Grantee, its successors and assigns, so long as same is used as and for Power Lines or Power Line and no longer.

In witness whereof the said Grantor corporation, in pursuance of a Resolution of its Board of Directors duly passed and entered on its books, has caused this instrument to be signed and the corporate seal to be affixed by its proper and duly authorized officers, the day and year first above written.

Upper Columbia Co., by R. B. Marchant, President.

Attest: C. S. Pinkerton, Secretary. (Corporate Seal Upper Columbia Company, State of Washington, 1909.)

4 50¢ U. S. I. R. Documentary Stamps cancelled. E. T. G., 1-19-18.

STATE OF NEW YORK,
County of New York, ss:

On this 4 day of Jany, A. D. 1918 before me a Notary Public in and for said County and State personally appeared R. B. Marchant and C. S. Pinkerton to me known to be the President and Secretary respectively, of the corporation

that executed the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

[fol. 23] In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Harry W. Finney, Notary Public for the State of New York, County of N. Y., Residing at N. Y. City. My commission expires Mch. 30, 1918. (Seal Harry W. Finney, Notary Public, New York County.)

No. 83258, Series B

State of New York,
County of New York, ss:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, Do hereby certify, That Harry W. Ginney whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York.

And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court and County, the 5 day of Jany. 1918.

Wm. F. Schneider, Clerk. (New York Seal.)

Filed for record at the Northport P. & L. Co. Jan. 19, 1918, at 4 o'clock P. M. Recorded Jan. 22, 1918. Book 54,

page 55[illegible]. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 24] Exhibit I

39291

Right of Way Deed

This indenture made the twenty-four day of September, A. D. 1917, between Wm. P. Hughes, a single man, of the State of Washington, hereinafter called the Grantor, of the first part, and the Northport Power & Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of Fifteen Dollars ($15.00), paid by said Grantee to said Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point 485.3 feet south and 66 ft. west of the northeast corner of the S. W. ¼ of N. E. ¼ of Section 14, Township 40 North, Range 39, E. W. M., Stevens County, Washington.

Thence from said last above named point S. 47 degrees 23' E. through a tract 66 ft. in width in the said S. W. ¼ of N. E. ¼ being the east 66 ft. of said S. W. ¼ of N. E. ¼, a distance 97.5 ft. to the east boundary of said tract, with a strip of land 49.5 ft. in width on both sides of the line so described, containing about 0.2 acres, more or less.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said

Power Lines and for any and all other purposes; also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush.

And the Grantor, for himself, his heirs and assigns, hereby releases the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed and described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

In witness whereof the said Grantor of the first part, has hereunto set his hand and seal the day and year first above written.

Wm. P. Hughes.

STATE OF WASHINGTON,
County of Stevens, ss:

On this 28th day of Sept. A. D. 1917, before me personally appeared Wm. P. Hughes, a single man, to me known to be the individual described in, and who executed the within and foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. E. Allison, Notary Public for the State of Washington, Residing at Northport. My commission expires May 12th, 1920. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1920.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3:12 P. M. Recorded Oct. 24, 1917. Book 54, page 215. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 25] Exhibit I

41991

Easement Deed for Substation Site at Northport

This indenture, made the 22nd day of December A. D. 1917, between the Northport Smelting and Refining Com-

pany, a corporation organized and existing under and by virtue of the laws of the State of Idaho hereinafter called the party of the first part and Northport Power and Light Company, a corporation, organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Party of the Second Part;

Witnesseth, That in consideration of the sum of One Dollar ($1.00) this day paid by the Party of the Second Part to the Party of the First Part, the receipt whereof is hereby acknowledged, that the party of the first part does hereby grant, convey, release, assign and confirm to the Party of the Second part, its successors and assigns, the right to erect and maintain, keep and have an area or enclosure for the purpose of erecting and maintaining a Substation Building, whether now erected or hereafter to be erected by the Party of the Second Part, such substation building to be used as may be deemed necessary for the distribution of electric power with all necessary machinery, appliances, fittings, attachments and wires into and out of said Substation. The said area or enclosure to enclose the following described piece or parcel of land, lying and being in the County of Stevens, State of Washington, namely, commencing:

From a point on the section line between Sections four (4) and Five (5) Township Thirty-nine (39) N. R. Forty E. W. M. at the intersection of the Great Northern Railway Right-of-way, the boundary line of the Town of Northport, and the smelter grounds of the Northport Smelting and Refining Company.

Thence S. 76 degrees 11′ E. 481.01 ft. to the place of beginning; Thence N. 61 degrees 11′ E. 80.0 ft. Thence S. 28 degrees 49′ E. 164.0 ft. Thence S. 61 degrees 11′ W. 48.83 ft. Thence N. 78 degrees 49′ W. 40.59 ft. Thence N. 28 degrees 49′ W. 138.0 ft. to the place of beginning, excepting a strip of land 6.42 ft. by 33.42 ft. contained in the Rectifier Building of said Northport Smelting and Refining Company, the area of the tract herein conveyed being 0.285 acres, more or less.

And also the full power, license and permission at all times hereafter for the representatives, officers, workmen and servants of the Party of the Second part, its successors and assigns, and with or without horses, wagons, auto-

mobiles and appliances to enter upon the said land of the Party of the First Part with full right of ingress and egress to and from and over the same for the purpose of operating, maintaining and repairing and changing such sub-station.

To have and to hold the same with all the privileges and appurtances thereof to the Party of the Second part, its successors and assigns.

The grant herein contained is made upon the condition and the party of the second part, for itself, its successors or assigns covenants and agrees with the party of the First Part, its successors or assigns, that it will remove said Substation that may now be erected or hereafter to be erected or constructed by or under the authority of the Party of the Second Part, its successors or assigns or its predecessors on the land above mentioned to some other convenient location to be designated and provided free of costs and charges by the Party of First Part, its successors or assigns, upon the Party of the Second Part, its successors or assigns being served by the Party of the First Part, its successors or assigns, with notice in writing so to do at least six months prior to the time such removal shall be required.

It is further understood and agreed between the parties hereto, each for itself, its successors or assigns, that in the event of such removal being required by the Party of [fol. 26] the First Part, its successors or assigns, said Substation shall be moved and reconstructed by the Party of the Second Part its successors or assigns, at the expense of the Party of the First Part, its successors or assigns, within six months after service of such notice as aforesaid and if the Party of the Second Part, its successors or assigns, shall fail to make any such removal so requested within six months after service as aforesaid, of notice to remove or on or prior to such later date as may be required, then and in every such event the party of the First Part, its successors or assigns, may forthwith remove, at their own expense, the sub-station so required to be removed, to such convenient location as is designated in such notice.

It is further understood and agreed by and between the parties hereto, each for itself, its successors or assigns, that if any dispute shall arise between the parties hereto

or between their respective successors or assigns, as to the amount of the expense of removing or reconstructing any such substation the amount of such expense and all other matters of difference which may arise between the parties hereto, their suecessors or assigns, respectively, with respect to such substation, shall be determined by arbitration.

In witness whereof the said first party corporation in pursuance of a Resolution of its Board of Directors duly passed and entered on its books, has caused this instrument to be signed and the corporate seal to be affixed by its proper and duly authorized officers and the day and year first above written.

Northport Smelting & Refining Co., by Jerome J. Day, Its President, and Eugene R. Day, Its Secretary. (Seal Northport Smelting and Refining Company, Wallace, Idaho. Incorporated 1901.)

STATE OF IDAHO,
County of Shoshone, ss:

On this 28th day of December A. D. 1917, before me personally appeared Jerome J. Day and Eugene R. Day to me known to be the President and Secretary respectively, of the corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Walter B. Heitfeld, Notary Public for the State of Idaho, Residing at Wallace, Idaho. (Seal Walter B. Heitfeld, Notary Public, State of Idaho. My commission expires Oct. 9, 1919.)

Filed for record at the request of Northport Power & Light Co., Rossland, B. C., Feb. 21, 1918, at 3:40 P. M. Book 55, page 13. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 27] EXHIBIT I

41992

Agreement

This indenture, made in duplicate the 22nd day of December, A. D. 1917, between the Northport Smelting and Refining Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, with its Head Office at Wallace, in the State of Idaho, One of the United States of America (hereinafter called the Grantor) of the first part, and the Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the state of Washington, one of the United States of America, with its Head Office at Northport, in the said State (hereinafter called the Grantee) of the second part:

Whereas by an Indenture dated the 22nd day of December A. D. 1917, and entered into by and between the parties hereto, the Grantor did grant and convey to the Grantee the right to erect and maintain and keep and have an area for the purpose of erecting and maintaining a sub-station building for the distribution of electric power with all the necessary machinery, appliances, fittings, attachments and wires into and out of the said sub-station, the said area or enclosure to enclose the following described piece or parcel of land, lying and being in the County of Stevens, State of Washington, namely, commencing:

From a point on the Section line between Sections Four (4) and Five (5), Township Thirty-nine (39) N. R. Forty (40) E. W. M. at the intersection of the Great Northern Railway Right-of-way, the boundary line of the Town of Northport, and the Smelter grounds of the Northport Smelting and Refining Company; Thence S. 76 degrees 11′ E. 481.01 ft. to the place of beginning: Thence N. 61 degrees 11′ E. 80.0 ft. Thence S. 28 degrees 49′ E. 164.0 ft. Thence S. 61 degrees 11′ W. 48.83 ft. Thence N. 78 degrees 49′ W. 40.59 ft. Thence N. 28 degrees 49′ W. 138.0 ft. to the place of beginning: excepting a strip of land 6.42 feet by 33.42 feet contained in the Rectifier building of said Northport

Smelting and Refining Company, the area of the tract herein conveyed being 0.285 acres, more or less and by such Agreement the Grantee agreed to remove said sub-station from the aforesaid land to some other convenient location to be designated and provided free of costs by the Grantor if the Grantor so desired and gave notice accordingly.

Now this indenture witnesseth that in consideration of the premises and of the sum of One Dollar ($1.00) now paid by the said Grantee to the said Grantor (The receipt whereof is hereby acknowledged) the Grantor doth hereby grant and convey unto the Grantee, its successors and assigns, the full free and uninterrupted right and liberty to the Grantee, its successors and assigns, to erect and maintain their pole line with all the necessary wires and attachments connected therewith upon and over a strip of land Ten (10) feet in width which is bounded and divided as follows:

Beginning at the junction of the East Wall of the Substation building of the Northport Power and Light Company with the South Wall of the Rectifier building of the Northport Smelting and Refining Company;

Thence S. 28 degrees 49′ E. 70.0 ft; Thence S. 61 degrees 11′ W. 719.12 ft. to the Section line between Sections 4 and 5; Thence S. 0 degrees 19′ W. 11.45 ft. along said Section line to a point 4.5 ft. from the South line of Centre Street; Thence N. 61 degrees 11′ E. 734.69 ft. parallel to the South line of said Centre Street. Thence N. 28 degrees 49′ E. 80.0 ft. to the South line of the Rectifier Building; Thence S. 61 degrees 11′ W. 10.0 ft. to the place of beginning; Also [fol. 28] commencing at a point on the section line between sections 4 and 5, Township 39 N. Range 40 E. W. M. at the intersection of the Great Northern Railway right-of-way and the north boundary of the grounds of the Northport Smelting & Refining Company, N. 61 degrees 11′ E. 373.18 ft. to the place of beginning.

Thence S. 28 degrees 49′ E. 469.18 ft. with a strip of land 49.5 ft. in width on both sides of the center line so described, to the fence bounding the said Smelter grounds, except that portion of ground included in the substation grounds of the Northport Power & Light Company, and for the purpose of erecting, maintaining and repairing such poles and lines, wires, and attachments connected therewith

full liberty to the Grantee, its agents, servants and workmen at all times to enter in and upon the said lands. And the Grantor for itself, its successors and assigns hereby covenants with the Grantee that if at any time the said substation building referred to in the hereinbefore in part recited Agreement of the 22nd day of December, should be removed to another location then that the Grantor, its successors or assigns will, in lieu of this grant herein contained, grant and convey unto the Grantee its successors and assigns the full, free and uninterrupted liberty to the grantee, its successors and assigns to maintain their pole line with the necessary wires and attachments connected therewith upon and over a strip of land Ten (10) feet in width from such new location across the lands of the Grantor to the point where the pole line of the Grantee now or hereafter enters on to their premises; and in this event then the Grantee, its successors and assigns will have the right and privilege to remove their pole line with all necessary wires and attachments from the property mentioned and described in this grant and to erect the same or others in lieu thereof upon the new location free of all costs and charges to it and that the Grantor, its successors and assigns will pay and bear all expense so incurred by the Grantee, its successors and assigns in and incidental to such removal; And the Grantor for itself, its successors and assigns, doth release the Grantee, its successors and assigns from all claims over any and all damages resulting to the lands through and across which said pole line is located or is hereafter to be located by reason of the location, construction maintenance and operation of a line of poles and wires for conveying electricity across the lands.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Jerome J. Day, for Northport Smelting & Refining Co. (Seal Northport Smelting and Refining Company, Wallace, Idaho. Incorporated 1901.)

Signed, sealed and delivered in the presence of W. B. Heitfeld, Jos. A. Brown.

Filed for record at the request of Northport Power & Light Co. Feb. 21, 1918, at 3:41 P. M. Recorded Feb. 23,

1918. Recorded in Book "55", page 15. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 29] EXHIBIT I

39743

Right of Way Deed

This Indenture made the 8th day of November A. D. 1917, between Sam Edwards, and Lena Edwards, his wife, of the State of Washington, hereinafter called the Grantors, of the first part, and the Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of Sixty-two Dollars ($62.00) paid by said Grantee to said Grantors, the receipt whereof is hereby acknowledged, the Grantors do hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the north boundary line of Lot 9, Section 25, Township 40 N. Range 39 E. W. M., 149.8 ft. west of the northeast corner of said lot.

Thence S. 9 degrees 19′ E. 908.95 ft. to a point on the East boundary line of said Lot 9; Thence South along the east boundary line 423 ft. to the southeast corner of said Lot 9; Thence west 28.5 feet; Thence N. 9 degrees 19′ W. 1337.65 ft. to a point on the north boundary line of said Lot 9; thence East along said north boundary line 100.4 ft. to the place of beginning containing 2.7 acres more or less.

The said strip conveyed being forty-nine and one-half feet on each side of the said centre line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter

into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all other purposes; also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush, and to fall timber on each side of the Right of Way which would reach the line.

And the Grantors, for themselves, their heirs and assigns, hereby release the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed and described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

In Witness Whereof, the said Grantors of the first part, have hereunto set their hands and seals the day and year first above written.

Sam Edwards, Amelia P. Edwards.

STATE OF WASHINGTON,
County of Stevens, ss:

On this 8th day of November A. D. 1917, before me personally appeared Sam Edwards, and Lena Edwards, his wife, to me known to be the individuals described in, and who executed the within and foregoing instrument, each and severally, and acknowledged the said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

[fol. 30] In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. E. Allison, Notary Public for the State of Washington, Residing at Northport, Wash. My commission expires May 12th, 1920. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1920.)

Filed for record at the request of Stevesn Co. Abst. Co. Nov. 12, 1917, at 11:25 A. M. Recorded Nov. 13, 1917. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 31] 39295

Right of Way Deed

This Indenture made the twenty-fourth day of September, A. D. 1917, between Harry C. Butler and Josephine Butler, his wife, of the State of Washington, hereinafter called Grantors, of the first part; and the Northport Power & Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of Two Hundred Dollars ($200.00) paid by said Grantee to said Grantors, the receipt whereof is hereby acknowledged, the Grantors do hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the West boundary of the W. ½ of the N. E. ¼ of Section 14, Township 40 North, Range 39, E. W. M., 639.5 ft. south of the ¼ Section corner between Sections 11 and 14; Thence from said last above named point S. 47 degrees 23' E. 1697 ft. through the W. ½ of the N. E. ¼ to a point on the west boundary of a tract of land 66 feet wide on the East side of the S. W. ¼ of the N. E. ¼ of said Section 14, 485.3 ft. south of the northwest corner of said tract, containing 3.87 acres more or less

The said strip conveyed being forty-nine and one-half feet on each side of the said center line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all other purposes; also granting the right and privilege unto said Grantee to cut

and remove from said granted lands all timber and brush.

And the Grantors, for themselves, their heirs and assigns, hereby release the said Grantee, its successor and assigns, from any and all claims for damages resulting to the lands in this deed described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

In witness whereof the said grantors of the first part, have hereunto set their hands and seals the day and year first above written.

Harry C. Butler, Mrs. Josephine Butler.

STATE OF WASHINGTON,
County of Stevens, ss:

On this 1st day of October A. D. 1917, before me personally appeared Harry C. Butler and Josephine Butler, his wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and each and severally acknowledged the said instrument to be their free and voluntary act and deed for the use and purpose therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. E. Allison, Notary Public for the State of Washington, residing at Northport. My commission expires May 12th, 1920. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1920.)

Filed for record at the request of F. L. Buell, Northport, Oct. 20, 1917, at 3:30 P.M. Recorded Oct. 24, 1917. Book "54", page 214. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 32] EXHIBIT I

39654

Right of Way Deed

This indenture made the 3rd day of Nov. A. D. 1917, between the St. Crispin Mining Milling Smelting and

Developing Company a corporation organized and existing under and by virtue of the laws of the State of Washington hereinafter called the Grantor, of the first part, and the Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of Three Hundred & No/100 Dollars, paid by said Grantee to said Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit: Beginning at a point on the north boundary line of the N. W. ¼ of the N. E. ¼, Section 25, Township 40 N. Range 39, E. W. M., 433.6 ft. east of the ¼ Sec. corner between Sections 24 and 25; thence S. 9 degrees 19′ E. as surveyed through the Smuggler, St. Crispin, Safety and Hoodoo mining claims, 1337.6 ft. to a point on the south boundary line of said N. W. ¼ of the N. E. ¼, 650 ft. east of the southwest corner thereof; containing 3.04 acres, more or less.

The said strip conveyed being forty-nine and one-half feet on each side of the said centre line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing and maintaining its said Power Lines and for any and all other purposes except mining also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush, and to fall timber on each side of the Right of Way which would reach the line.

And the Grantor, for itself, its successors and assigns, hereby releases the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands

in this deed and described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines.

In witness whereof the said Grantor corporation, in pursuance of a Resolution of its Board of Directors duly passed and entered on its books, has caused this instrument to be signed and the corporate seal to be affixed by its proper and duly authorized officers, the day and year first above written.

The St. Crispin Mining, Milling, Smelting & Developing Company, by H. W. Brooks, President, and Wm. P. Hughes, Secretary pro tem. (Corporate seal St. Crispin Mining, Milling, Smelting and Developing Company of Northport, Washington.)

[fol. 33] STATE OF WASHINGTON,
County of Stevens, ss:

On this 5th day of November, A. D. 1917, before me, a Notary Public in and for said County and State personally appeared H. W. Brooks and Wm. P. Hughes, respectively, of the corporation that executed the within instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

John H. Bowers, Notary Public for the State of Washington, Residing at Northport, Wash. My commission expires March 11, 1921. (Seal John H. Bowers, Notary Public, State of Washington. Commission expires Mar. 11, 1921.)

Filed for record at the request of Stevens County Abst. Co. Nov. 7, 1917, at 3:18 P. M. Recorded Nov. 8, 1917. Book 54, page 284. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 34] EXHIBIT I

39403

Right of Way Deed

This indenture, made the 25th day of October A. D. 1917, between John D. Phillips, and Fannie Phillips, his wife, of the State of Washington, hereinafter called the Grantors, of the first part, and the Northport Power and Light Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the Grantee, of the second part, witnesseth:

In consideration of the sum of One Hundred and Twenty-five Dollars ($125.00) paid by said Grantee to said Grantors, the receipt whereof is hereby acknowledged, the Grantors do hereby grant, sell, convey and confirm unto said Grantee, its successors and assigns, the full, free and uninterrupted right, liberty, privilege and authority to construct operate and maintain its Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances, over, across and upon a strip of land ninety-nine feet in width in Township Forty (40) North, Range Thirty-nine (39) East W. M., in Stevens County, Washington, the center line of which strip is surveyed and marked upon the ground and is described as follows, to-wit:

Beginning at a point on the north boundary line of Lot 5, Sec. 25, Twp. 40 N., R. 39 E. W. M., 866.6 ft. east of the northwest corner of said Lot; thence S. 9 degrees 19' E. 1202.6 ft., as surveyed through said Lot 5, to a point on the north boundary line of Lot 9, said Section 25, 200 ft. west of the northeast corner of said Lot; containing 2.73 acres more or less.

The said strip conveyed being forty-nine and one-half feet on each side of the said centre line.

Also granting unto said Grantee, its successors and assigns, the right, privilege and authority to at all times enter into and upon the said granted strip of land for the purpose of constructing, repairing, and maintaining its said Power Lines for any and all other purposes; also granting the right and privilege unto said Grantee to cut and remove from said granted lands all timber and brush,

and to fall timber on each side of the Right of Way which would reach the line.

And the Grantors, for themselves, their heirs and assigns, hereby release the said Grantee, its successors and assigns, from any and all claims for damages resulting to the lands in this deed and described and conveyed by reason of the location, construction, maintenance and operation of its said Power Lines. Reserving the right to crop and cultivate said land and passage over same at all times not interfering with second party's right to use the same for its purposes as herein before set forth. This easement to cease and determine if said land is abandoned for the uses aforesaid.

In witness whereof the said Grantors of the First Part, have hereunto set their hands and seals the day and year first above written.

John D. Phillips, Fannie Phillips.

STATE OF WASHINGTON,
County of Stevens, ss:

On this 25th day of October A. D. 1917, before me personally appeared John D. Phillips and Fannie Phillips, his wife, to me known to be the individuals described in, and who executed the within and foregoing instrument, each and severally, and acknowledged the said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

C. E. Allison, Notary Public for the State of Washington, Residing at Northport, Wash. My Commission expires May 12, 1920. (Seal C. E. Allison, Notary Public, State of Washington. Commission expires May 12, 1920.)

Filed for record at the request of Stevens County Abstract Co. Oct. 26, 1917, at 3:16 P. M. Recorded Oct. 27, 1917. Book 54, page 248. Earle T. Gates, County Auditor. Dorothy Dexter, Deputy.

[fol. 35] EXHIBIT I

Ordinance No. 124

An Ordinance Granting to the Northport Power & Light Company, its Associates, Successors, and Assigns, a Franchise to Construct and Operate a System of Conductors for the Distribution of Electricity in the Town of Northport.

Be it ordained by the Council of the town of Northport:

Section 1. There is hereby granted and given to the Northport Power & Light Company, its associates, successors and assigns, permission and authority to construct, maintain and operate for the term of ten (10) years from and after the date of the passage and publication of this Ordinance, a system or systems of conductors, either overhead or underground or both, for the distributing of electric currents to be used for light, heat or power on the streets, alleys, tunnels, bridges and public grounds in such manner as not to interfere with the general use of such streets.

Section 2. The said above named party and its associates, successors and assigns shall have the right to erect and maintain suitable poles or other devices within the town walk or lines along the sides of the streets, avenues, alleys and public thoroughfares of said town, with suitable wires and other devices for the purpose of or proper construction of a system for the purposes above mentioned, and to place, maintain and operate thereon and by means thereof electric wires, devices and currents for such purposes, provided such wires shall not be maintained at a height of less than eighteen feet above the surface of the street. Wires and other devices shall not unreasonably interfere with the ordinary level and necessary use of said bridges, streets, alleys, etc.

Section 3. The said Northport Power & Light Company and its associates, successors or assigns, shall repair any damage to any street, sidewalk, or public property occasioned by the construction and maintenance of their works, and the said Northport Power & Light Company and its associates, successors and assigns shall erect

all poles and devices in a workmanlike manner and after such *owrk* is completed, shall remove from all streets, or alleys, all surfac*r* sand, earth, rubbish or other material which may be taken up or dug up in the construction or erection of said poles or devices, and shall put all streets or alleys in as good condition as they were before being dug up or disturbed.

Section 4. Said system of electric distribution and all things thereto belonging or in any wise appertaining shall be constructed and at all times operated and maintained in the safest and most approved manner with every possible safeguard against danger to life or property.

Section 5. This ordinance shall take effect and be in force from and after its passage and publication.

Passed first reading September 4th, 1918.

Passed second reading and placed upon its final passage and duly passed October 2, 1918.

Approved by the Mayor Oct. 2nd, 1918.

(Sgd.) L. L. Leonard, Mayor pro Tem.

Attest: (Sgd.) Jesse Garver, Clerk, by (Sgd.) John R. Stout, Deputy.

Approved as to form. (Sgd.) Frank C. Hale, City Attorney.

[fol. 36] EXHIBIT I

Resolution

Be it hereby resolved by the City Council of the City of Northport, County of Stevens, State of Washington, that the schedule of lighting rates attached to Ordinance number 124 of said City, which ordinance granted a franchise to the Northport Power and Light Company, to construct and operate a system of conductors for the distribution of electricity, in the City of Northport, are hereby accepted by the said City.

Adopted by the City Council at a regular meeting held November 6th, 1918.

(Sgd.) L. L. Leonard, Mayor pro Tem.

Attest: Jesse Garver, City Clerk, by John R. Stout, Deputy.

Northport Power & Light Company. (Sgd.) J. D. McDonald, General Supt.

Witness: (Sgd.) I. J. Trembath.

[fol. 37] EXHIBIT I

Franchise with the City of Northport, Wash.

Ordinance No. 133

An Ordinance Granting to the Northport Power & Light Company, Its Associates, Successors, and Assigns, a tors for the Distribution of Electricity in the Town of Northport

Be it ordained by the Council of the town of Northport:

Section 1. There is hereby granted and given to the Northport Power & Light Company, its associates, successors and assigns, permission and authority to construct, maintain and operate for the term of Ten (10) years from and after the date of the passage and publication of this Ordinance, a system or systems of conductors, either overhead or underground, or both, for the distributing of electric currents to be used for light, heat, or power on the streets, alleys, tunnels, bridges and public grounds in such manner as not to interfere with the general use of such streets.

Section 2. The said above named party and its associates, successors and assigns, shall have the right to erect and maintain suitable poles or other devices within the town walk er lines along the sides of the streets, avenues, alleys and public thoroughfares of said town, with suitable wires and other devices for the purpose of or proper construction of a system for the purposes above mentioned, and to place, maintain and operate thereon and by means thereof electric wires, devices and currents for such purposes, provided such wires shall not be maintained at a height of less than eighteen feet above the surface of the street. Wires and other devices shall not unreasonably interfere with the ordinary level and necessary use of said bridges, streets, alleys, etc.

Section 3. The said Northport Power & Light Company and its associates, successors or assigns, shall repair any damage to any street, sidewalk or public property occasioned by the construction and maintenance of their works, and the said Northport Power & Light Company and its associates, successors and assigns shall erect all poles and devices in a workmanlike manner and after such work is completed shall remove from all streets or alleys, all surfact sand, earth, rubbish or other material which may be taken up or dug up in the construction or erection of said poles or devices, and shall put all streets or alleys in as good condition as they were before being dug up or distrubed.

Section 4. Said system of electric distribution and all things thereto belonging or in any wise appertaining shall be constructed and at all times operated and maintained in the safest and most approved manner, with every possible safeguard against danger to life or property.

Section 5. The said Northport Power & Light Company and its associates, successors or assigns, shall pay monthly to the town of Northport, as a consideration for the permission herein granted, a sum equal to two thirds of the amount paid monthly for street lights by the Municipality of the town of Northport to the said Northport Power & Light Company.

[fol. 38] Section 6. This ordinance shall take effect and be in force from and after its passage and publication.

Passed first reading November 21st, 1928.

Passed second and third reading and placed upon its final passage and duly passed December 5th, 1928.

Approved by the Mayor December 5th, 1928.

(Sgd.) J. M. Tyllia, Mayor.

Attest: (Sgd.) Carrie Allen, Town Clerk. (Seal City of Northport.)

[fol. 39] EXHIBIT I

Be it hereby resolved by the City Council of the City of Northport, County of Stevens, State of Washington that the schedule of lighting rates, being rates, rules and regulations as filed and published, attached to Ordinance No. 133

of said City, which Ordinance granted a franchise to the Northport Power and Light Company to construct and operate a system of Conductors for the distribution of electricity, in the City of Northport, are hereby accepted by the said city.

Adopted by the City Council at a regular meeting held December 5, 1928.

(Sgd.) J. M. Tyllia, Mayor.

Attest: Carrie Allen, City Clerk.

[fol. 40] EXHIBIT 2 TO BILL OF COMPLAINT

Articles of Incorporation of Northport Power and Light Company

Know all men by these presents that we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming, and do hereby form, a corporation under the laws of the State of Washington, and hereby adopt the following Articles of Incorporation.

Article I

The name of this Corporation shall be and is: Northport Power and Light Company.

Article II

The Purposes for which this Corporations is formed are:

First, to buy, own, obtain, sell, generate, install, develop, distribute and delever any water, steam, electrical, gas or other power or heat; to buy, erect, maintain, operate, sell, dispose of and convey power plants, transmission lines, power stations and sub-plants; to obtain, buy, lease, own and hold municipal light and power franchises and buy plants, machinery, lines and appliances necessary to maintain and operate the same, and to sell and deliver to municipalities and to public and private corporations and private citizens, electrical current and other power for heat, power, lighting and other purposes.

Second, to locate, buy, obtain, own sell, lease and procure water rights and roads and highways, bridges, trails or other means for facilitating the erection and maintenance and operation of such power plants necessary and expedient for any of the purposes of this corporation.

Third, to buy, obtain, own lease and operate telephone and telegraph lines and plants, railroads and other lines of transportation and communication, and any necessary franchises therefor.

Fourth, to buy, obtain, own, sell and mortgage real estate and personal property and to borrow money in the name of the corporation and give notes, bonds, mortgages or other securities for same.

[fol. 41] Fifth, to locate, acquire, procure, take, hold, work, operate, bond, buy, lease, sell, convey and develop mines, metals and mineral claims of every description and kind within the State of Washington, the United States of America, British Columbia and elsewhere; to carry on and conduct a general min*gn*, smelting, milling and reduction business; to buy or otherwise acquire minerals, ores, plants, machinery, implements and all things capable of being used in connection with metallurgical operations or, any of the business of the corporation, and to sell, dispose of or convey the same, either the whole or any part thereof.

Sixth, to bond, buy, lease, locate, own and hold ditches, flumes and water rights; to construct, lease, buy, sell, build, own and operate railroads, ferries, tramways and other means for transporting ore, mechandise and passengers; to own, bond, buy, lease and locate timber claims; to own and hold stock in other corporations; to borrow, raise and secure the payment of money by mortgaging, selling, or leasing any or all of its real or personal property in such manner as may be for the best interest of the corporation; and finally, to do everything consistent, proper and requisite for the carrying out of the objects and purposes aforesaid, in their fullest and broadest sense, within the State of Washington, the United States of America and the Dominion of Canada.

Article III

The capitalization of this corporation shall be Two Hundred Thousand ($200,000) Dollars, divided into Two Hun-

dred Thousand ($200,000) fully paid shares of the par value of One ($1.00) Dollar each, of which, such portion as may be designated by by-law, if any shall be preferred stock, and the entire capital stock or the proceeds thereof, or any portion of same, may be used in the purchase and acquisition of property and property rights, consessions and interests necessary for the purpose of the corporation.

Article IV

The term for which this Corporation shall exist is fifty (50) years from and after the date of its incorporation.

[fol. 42]

Article V

The place where the principal business of this corporation shall be conducted is the town of Northport, Washington, and the corporation may have and maintain from time to time branch offices in other places in the United States and Canada, or elsewhere, as the board of trustees, by resolution, may determine and designate.

Article VI

The number of trustees who shall manage the affairs of this corporation shall be three (3), and the names and addresses of those who are hereby appointed as trustees to manage same during the first six months of its existance are: Lorne A. Campbell, Rossland, British Columbia; H. R. Williams, Coleville, Washington; O. C. Moore, Spokane, Washington.

Article VII

A majority of the whole number of trustees above designated shall form a quorum for the transaction of the company's business, and said board of trustees is hereby authorized and directed to formulate and adopt a set of by-laws, not inconsistent with these articles of incorporation, the Constitution of the United States, or the Constitution and laws of the State of Washington, to regulate the affairs of the corporation, and said board of trustees is in like manner authorized and empowered to revise, modify and amend said by-laws from time to time as conditions may require.

In witness whereof we have hereunto set our hands and seals in triplicate this 26th day of June, A. D. 1917.

Lorne A. Campbell (Seal), O. C. Moore (Seal).

[fol. 43] State of Washington,
County of Spokane, ss:

I, R. P. Woodworth, a Notary Public in and for the State of Washington, residing at Spokane, hereby certify that on this 26th day of June, A. D. 1917, personally appeared before me Lorne A. Campbell and O. C. Moore, to me known to be the individuals described in and who executed the foregoing and attached Articles of Incorporation, and acknowledged that they signed and sealed same in triplicate as their free and voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal the day and year first above written.

R. P. Woodworth, Notary Public for the State of Washington, Residing at Spokane. (Seal R. P. Woodworth, Notary Public, State of Washington. Commission expires Dec. 10, 1919.)

No. 674. 37272

State of Washington,
County of Stevens, ss:

This certifies that this instrument was filed for record in the Auditor's office of said County on the 6th day of July, 1917, at 2 o'clock and 4 Min. P. M., at the request of O. C. Moore. Recorded in book — of records of Stevens County, Washington, on page —. 19—.

Earle T. Gates, Aud. of Stevens Co., Wash. Saluda Kildow, Deputy.

[File endorsement omitted.]

[fol. 44] In United States District Court

Motion for Injunction—Filed Sept. 9, 1929

Plaintiff moves that an injunction pendente lite be granted and issued in accordance with the prayer of the

complaint, and that a temporary restraining order be issued enjoining and restraining defendants with respect to the matters and things against which relief is prayed in the complaint pending, the hearing and determination of the application for an interlocutory injunction.

This motion is based upon the complaint herein.

W. Lon Johnson, O. C. Moore, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 45] In United States District Court

Notice of Motion for Injunction—Filed Sept. 9, 1929

To Roland H. Hartley, as Governor of the State of Washington, and John H. Dunbar, as Attorney General of the State of Washington:

Please take notice that on the bill of complaint in this action, copies of which are hereunto attached, the undersigned will move the court at the Federal Court room in the City of Tacoma on the 16th day of September, 1929, at ten o'clock A. M., or as soon thereafter as counsel can be heard, for an interlocutory injunction to restrain pendente lite the defendants, Roland H. Hartley and John H. Dunbar, or their agents or deputies, from instituting any suit or proceeding to escheat the property of the plaintiff located in the State of Washington used in foreign commerce, and for such other and further order as may be just.

Dated this 9th day of September, 1929.

W. Lon Johnson, O. C. Moore, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 46] In United States District Court

Temporary Restraining Order—Filed Sept. 9, 1929

The plaintiff appearing by O. C. Moore, one of its attorneys, and having duly filed herein a motion for an injunc-

tion pendente lite, and it appearing that the defendants have threatened and are about to institute a suit to escheat the property of the plaintiff to the State of Washington which the plaintiff claims to be illegal and void, and that such a suit to escheat the property of the plaintiff, if wrongful, would be an irreparable injury to the plaintiff in that it would deprive the plaintiff of its property within the State of Washington and compel it to cease business within the State of Washington, and that a temporary restraining order should be granted for the reason that defendants have threatened to seize the property of the plaintiff through escheat proceedings immediately and without any further notice to plaintiff, and the Court being fully advised in the premises;

It is ordered that the defendants, their agents or deputies, and each of them, do absolutely desist and refrain from instituting any proceedings in the courts against the plaintiff for the purpose of escheating to the State of Washington the property of the plaintiff used in its business as engaged [fol. 47] in foreign commerce, or from instituting or prosecuting any proceedings whatsoever for the purpose of escheating to the State of Washington any of the property of the plaintiff utilized in foreign commerce, upon the plaintiff first executing to the court a bond in the sum of one thousand dollars to be approved by the judge of this Court.

It is further ordered that defendants be and appear in the above entitled court on Monday, the 16 day of September, 1929 at the hour of ten o'clock A. M., then and there to show cause, if any there be, why a preliminary injunction restraining and enjoining the defendants from the acts aforesaid should not be granted, and why bond in a sum greater than the aforesaid sum should be required as a condition to the issuance of such preliminary injunction.

Done in open court this 9th day of September, 1929.

Frank H. Rudkin, Judge.

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

SUBPŒNA AND MARSHAL'S RETURN—Filed Sept. 11, 1929

The President of the United States of America to Roland H. Hartley, as Governor of the State of Washington, and John H. Dunbar, as Attorney General of the State of Washington, Defendants, Greeting:

You are hereby commanded that you be and appear in said District Court of the United States aforesaid, at the Court Room of said Court, in the City of Tacoma, Washington, on the twenty-ninth day of September, 1929, to answer a Bill of Complaint filed against you in said Court by Northport Power and Light Company, a corporation, plaintiff, and to do and receive what the Court shall have considered in that behalf. And this you are not to omit under penalty of the law.

Witness, the Honorable Edward E. Cushman, Judge of said Court, and the seal thereof, at Tacoma, Washington, this 9th day of September, 1929.

Ed M. Lakin, Clerk, by E. Redmayne, Deputy Clerk. (Seal).

Memorandum Pursuant to Rule 12, Supreme Court, U. S.

You are hereby required to file your Answer or other defense in the above-mentioned suit on or before twenty days from the date of service, excluding the day thereof, at the Clerk's office of said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

Ed M. Lakin, Clerk, by E. Redmayne, Deputy. (Seal.)

[fol. 49] Marshal's Return

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I hereby certify that I have served the within writ by delivering to and leaving a true copy thereof with Roland H. Hartley, as Governor of the State of Washington, and John H. Dunbar, as Attorney General of State of Washington.

E. B. Benn, United States Marshal, by L. Holtz, Deputy.

September 10, 1929.

Fees: $5.92.

[fol. 50] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed Sept. 17, 1929

Come now the defendants, Roland H. Hartley, as governor of the state of Washington, and John H. Dunbar, as attorney general of the state of Washington, and move the court to dismiss the bill of complaint filed herein for the reasons and upon the grounds that, as appears upon the face thereof;

1. Said bill of complaint does not state any matters of equity entitling the plaintiff to the relief prayed for;

2. Said bill of complaint does not state facts sufficient to entitle plaintiff to any relief against these defendants or either of them;

3. The plaintiff has a plain, adequate and complete remedy at law.

Wherefore defendants pray the judgment of this court whether they shall further answer and that they be dismissed with their costs.

John H. Dunbar, Attorney General; Jno. A. Homer, Assistant Attorney General, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 51] IN UNITED STATES DISTRICT COURT.

MEMORANDUM OPINION UPON APPLICATION FOR INTERLOCUTORY INJUNCTION UNDER SECTION 266, JUDICIAL CODE, AND MOTION TO DISMISS THE BILL OF COMPLAINT—Filed Oct. 14, 1929

Plaintiff, a corporation organized under the laws of the State of Washington, a majority of whose issued capital stock is owned by an alien corporation, alleging that Section 33, of Article II of the Constitution of the State of Washington violates, as to Plaintiff, provisions of the Constitution of the United States, prays that the Defendants—

the Governor and Attorney General of such State—be enjoined from bringing any proceeding for the purpose of enforcing such section or certain of the enactments of the Legislature for the purpose of carrying out such constitutional provision.

This cause was heard upon Motion for Interlocutory Injunction and Motion to Dismiss the Bill of Complaint.

It is alleged in the Bill of Complaint that the Plaintiff has been, since the year 1917, the owner of certain right of way easements and franchises in the State of Washington on which rights-of-way there have been constructed its transmission lines and power stations for the purpose of conveying electrical energy from a point north of the International Boundary Line in British Columbia to points in the State of Washington; which right-of-way easements and franchises are necessary for that purpose; that Plain-
[fol. 52] tiff purchases all of its electrical energy from the West Kootenay Power and Light Company, Ltd., a corporation of Canada, and transmits the same from British Columbia over transmission lines to consumers in the town of Northport, in the State of Washington; that Plaintiff has a franchise from such town authorizing it to sell and distribute electrical energy to the inhabitants thereof and that it has, at all times since 1917, been engaged in selling and distributing electrical current generated in the Dominion of Canada and transmitted across the International Boundary Line into the State of Washington for the purpose of such sale and distribution.

Section 33, Article II of the Constitution of the State of Washington (1 Remington's Compiled Statutes of Washington, 1922, page 68) provides:

"Sec. 33. Ownership of Lands by Aliens Prohibited—Exceptions.—The ownership of lands by aliens, other than those in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of land hereafter made to any alien directly, or in trust for such alien, shall be void; Provided, that the provisions of this section shall not apply to lands containing valuable deposits of min-

erals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition."

Section 1, Chapter 50, Session Laws of 1921, State of Washington (Sec. 10581, Remington's Compiled Statutes of Washington, 1922, Vol. 3, provides:

* * * * * * *

"(a) 'Alien' does not include an alien who has in good faith declared his intention to become a citizen of the United States, but does include all other aliens and all corporations and other organized groups of persons a major-[fol. 53] ity of whose capital stock is owned or controlled by aliens or a majority of whose members are aliens;

(b) 'Land' does not include lands containing valuable deposits of minerals, metals, iron, coal or fire clay or the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom, but does include every other kind of land every interest therein and right to the control, possession, use, enjoyment, rents, issues or profits thereof except a mortgage and except a right to the possession, use or enjoyment of land for a period of not more than ten years for a purpose for which an alien is accorded the use of land by a treaty between the United States and the country whereof he is a citizen;

* * * * * * *

(f) Ownership of or title to land acquired by inheritance or in good faith either under mortgage or in the ordinary course of justice in the collection of debts, or acquired by a female citizen afterwards expatriated by marriage to an alien, is encluded;"

Section 2, Chapter 50, Session Laws of 1921, State of Washington (Section 10582, Remington's Compiled Statutes of Washington, 1922, Vol. 3) provides:

* * * * * * *

"An alien shall not own land or take or hold title thereto. No person shall take or hold land or title to land for an alien. Land now held by or for aliens in violation of the Constitution of the state is forfeited to and declared to be the property of the state. Land hereafter conveyed to or for the use of aliens in violation of the Constitution or of this act shall thereby be forfeited to and become the property of the state."

Section 8, Chapter 50, Session Laws of 1921, State of Washington, (Section 10588, Remington's Compiled Statutes of Washington, 1922, Vol. 3) provides:

"* * * It shall be the duty of the attorney general and of the prosecuting attorneys of the several counties to enforce this act, and of the attorney general to direct and control its enforcement."

Section 9, Chapter 50, Session Laws of 1921, State of Washington. (Section 10589, Remington's Compiled Statutes of Washington, 1922, Vol. 3) provides:

"* * * Proverty forfeited to the state by this act shall inure to the permanent common school fund and be managed and disposed of accordingly."

[fol. 54] It is alleged in the Complaint that the Defendants have threatened to and will enforce said act against the Plaintiff because of the fact that the majority of the capital stock of the Plaintiff corporation is owned by an alien, and will forfeit or attempt to forfeit all of said leasehold interests and franchises and the whole thereof and all the improvements thereon, and will attempt to escheat the same to the State of Washington, by the institution and prosecution of a suit at law in the Courts of Washington, as a result of which Plaintiff will suffer great and irreparable loss and damage.

W. Lon Johnson, Colville, Washington, and O. C. Moore, 501 Peyton Bldg., Spokane, Washington, Attorneys for Plaintiff.

John H. Dunbar, Attorney General of Washington, Olympia, Wn.; Jno. A. Homer, Ass. Attorney General of

Temple of Justice, Olympia, Wn., Attorneys for Defendants.

Plaintiff cites Section 266, Judicial Code; Section 33, Article II, Constitution of the State of Washington; Section 4, Chapter 50, Session Laws of 1921, State of Washington (Sec. 10582, Remington's Compiled Statutes of Washington, 1922, Vol. 3); Section VIII, Article I, Constitution of the United States; Section X, Article I, Constitution of the United States; Section I, 14th Amendment, Constitution of the United States; Commerce Treaty of 1815 between United States and Great Britain; Smyth vs. Ames, 169 U. S. 466, 478 (42 L. Ed. 819, 938); Risty vs. C. R. I. & P. *Rco.*, 270 U. S. 378, 388 (70 L. Ed. 642-650); Terrace vs. Thompson, 263 U. S. 197, 214 (68 L. Ed. 255-274); Walla Walla vs. Walla Walla Water Co., 172 U. S. 1, 12 (43 L. Ed. 341, 346); [fol. 55] Adams vs. Tanner, 244 U. S. 590, 592 (61 L. Ed. 1336, 1342); Truax vs. Raich, 239 U. S. 33, 37 (60 L. E. 131, 133); Rast vs. Van Deman & Lewis Co., 240 U. S. 342, 355 (60 L. Ed. 679, 686); Kennington vs. Palmer, 255 U. S. 100 (65 L. Ed. 528); Ex parte Young, 209 U. S. 126, 153 (62 L. Ed. 714, 730); Foster-Franklin Packing Co. vs. Haydell, 278 U. S. 1 (73 L. Ed. 1, 5); Ohio Oil Co. vs. Conway, 73 L. Ed. 294, 295; Liggett Co. vs. Baldridge, 278 U. S. 105 (73 L. Ed. 45); State Ex rel Dunbar vs. Shokuta, 131 Wash. 291, 293; State vs. Hirabayashi, 139 Wash. 696, 699; Siler vs. Louisville & N. R. Co., 213 U. S. 175, 195 (53 L. Ed. 753, 757); Ohio Tax Cases, 232 U. S. 576, 586 (58 L. Ed. 738, 743); Greene vs. Louisville & I. R. Co., 244 U. S. 499, 508 (61 L. Ed. 1280, 1286); United Fuel & Gas Co. vs. Railroad Commission, 73 L. Ed. 104, 106; City of Dayton vs. City Ry. Co., 16 Fed. (2d) 401, 403; State vs. Natsuhara, 136 Wash. 436, 444; State vs. Matomatsu, 139 Wash. 639; 19 Corpus Juris 865, 866 and cases cited in Notes 50, 51; 9 R. C. L. 737; Branan vs. Wimsatt, 298 Fed. 833, 836; Stovall vs. Coggins Granite Co., 42 S. E. 723, 724; Ernst vs. Allen, et al., 184 Pac. 827, 839; Waller vs. Hildebrecht, 128 N. E. 807, 809; Kershaw vs. Burns, 74 S. E. 378, 379; 33 Cyc. 169; Reichenbach vs. Washington Short Line R. Co., 10 Wash. 357 (38 Pac. 1126); Knapp vs. Crawford, 16 Wash. 524; Spokane vs. Colby, 16 Wash. 610; Pacific Iron Works vs.

Bryant Lumber Co., 60 Wash. 502 (111 Pac. 578); Neitzel vs. Spokane International R. Co., 65 Wash. 100; Boatman vs. Lasley, 23 Oh. St. 614; Stockdale vs. Yerden, 190 N. W. 225; State ex rel. Winston vs. Morrison, 18 Wash. 664; Myers vs. Arthur, 135 Wash. 583; Salisbury vs. Alskog, 144 Wash. 88; Humphrey vs. Grutz, 77 Wash. 152, 157; Columbua etc. Co. vs. Columbua, 249 U. S. 399 (63 L. Ed. 669, 676); Section 12, Article I, Constitution of the State of Washington; Thompson on Corporations (3d) Sec. 2184, 2185, [fol. 56] *2185* and 2188; Frost vs. Railroad Commission, 271 U. S. 583, 596 (71 L. Ed. 1101, 1106); Williams vs. Standard Oil Co., 73 L. Ed. 141, 143; Quaker City Cab Co. vs. Penn., 277 U. S. 389, 400 (72 L. Ed. 927, 929); Public Utilities Comm. vs. Attleboro Steam & E. Co., 273 U. S. 83, 86 (71 L. Ed. 549, 552); Simpson vs. Shepard, 230 U. S. 352, 396 (57 L. Ed. 1511, 1540); Gibbons vs. Ogden, 9 Wheat. 22 U. S. 1-240; Gloucester Ferry Co. vs. Penn., 114 U. S. 196, 204 (29 L. Ed. 158, 162); Penn. vs. West Virginia, 262 U. S. 553, 596 (67 L. Ed. 1117, 1132); Dahnke-Walker Mills Co. vs. Bondurant, 257 U. S. 282, 291 (66 L. Ed. 239, 244); Shafer vs. Farmers Grain Co., 268 U. S. 196, 200 (69 L. Ed. 908, 915); Foster Fountain Pack. Co. vs. Haydel, 73 L. Ed. 1, 4); Anderson vs. Shipowners Asso., 272 U. S. 359, 363 (71 L. Ed. 298, 301); Hammer vs. Dagenhart, 247 U. S. 251, 269 (62 L. ed. 1101, 1105); South Carolina vs. Georgia, 93 U. S. 4 (23 L. Ed. 782); Mondou vs. N. Y. Etc. R. Co., 223 U. S. 1, 47, 49 (56 L. Ed. 327, 345, 346); Smith vs. Alabama, 124 U. S. 465, 473 (31 L. Ed. 508, 510); Di Santo vs. Penn., 273 U. S. 34, 37 (71 L. Ed. 524, 526); Penn Gas Co. vs. Public Service Comm., 252 U. S. 23, 27 (64 L. Ed. 434, 441); Interstate Commerce Comm. vs. Ill. C. R. Co., 215 U. S. 452, 474 (54 L. Ed. 280, 289); Ozark Pipe Corp. vs. Menier, 266 U. S. 555, 565 (69 L. Ed. 439, 443); Luckenbach S. S. Co. vs. Denney, 278 Pac. 419, 422; Mich. Public Utilities Comm. vs. Duke, 266 U. S. 570 (69 L. Ed. 445); Philadelphia etc. S. S. Co. vs. Penn., 122 U. S. 326 (30 L. Ed. 1200); Lemke vs. Farmers Grain Co., 258 U. S. 50, 59 (66 L. Ed. 458, 464); Meyer vs. Neb., 262 U. S. 390, 400 (67 L. Ed. 1042, 1045); Washington ex rel. vs. Kuykendall, 275 U. S. 207, 211 (72 L. Ed. 241, 275); Hastings vs. Anacortes Packing Co., 29 Wash. 224, 230; 1st Malloy's Comp., Page 624 (1815 Treaty

[fol. 57] between United States and Great Britain); Ohio ex rel Clarke vs. Deckenbach, 274 U. S. 392 (71 L. Ed. 1115); Jordan vs. Tashire, 73 L. Ed. 36; Terrace vs. Thompson, 263 U. S. 197, 217 (68 L. Ed. 255, 275); Webb vs. O'Brien, 263 U. S. 313, 322 (68 L. Ed. 318, 321); South Carolina vs. United States, 199 U. S. 437, 451 (50 L. Ed. 261, 265); Lewis Publishing Co. vs. Morgan, 229 U. S. 288, 314 (57 L. Ed. 1190, 1203); Dillon vs. Gloss, 256 U. S. 368, 373 (65 L. Ed. 994, 996); Cherokee National vs. Kans. Railway Co., 135 U. S. 641, 656.

Defendants cite: Section 384, United States Code; Boise Artesian Water Co. vs. Boise City, 213 U. S. 276; Singer Sewing Machine Co. vs. Benedict, 229 U. S. 481; Dalton Adding Machine Co. vs. Virginia, 236 U. S. 699; Cavanaugh vs. Looney, 248 U. S. 453; Section 33, Article II, Constitution of the State of Washington; Chapter 50, Session Laws of 1921, State of Washington; Humphrey vs. Krutz, 77 Wash. 152 at 157; Cook vs. The C. B. & Q. Rco. 40 Ia. 451; Goodrich vs. Burbank, 12 Allen's reports, at page 460; Standard Oil Co. vs. Buchi, 66 Atl. 427 (N. J.); Tidewater Pipe Co. vs. Bell, 124 Atl. 351 (Penn.); Terrace vs. Thompson, 263 U. S. 197; 1 R. C. L. 806; Webb vs. O'Brien, 263 U. S. 313, 322.

Before Frank S. Dietrich, Circuit Judge, and George M. Bourquin and Edward E. Cushman, District Judges

Cushman, District Judge:

Of the questions presented it will only be necessary to consider whether Plaintiff has an adequate remedy at law and in the determination of this question we are not required to consider whether the proceeding by the Attorney General, sought to be enjoined, is one of forfeiture or [fol. 58] escheat. Bouvier's Law Dictionary (Rawle's Third Edition), page 1069; 2 Blackstone's Commentaries 251.

It in no way has been made to appear that the remedy at law afforded Plaintiff in such a proceeding is not adequate. The determination of the question is controlled by Boise Artesian Water Co. vs. Boise City, 213 U. S. 276 and Cavanaugh et al. vs. Looney, 248 U. S. 453, in which latter case it was said at page 456:

"Nothing indicates that any objections to the validity of the statute could not be presented in an orderly way before the state court where defendants intended to institute condemnation proceeding;"

It is true that the jurisdiction of the District Court was upheld in Terrace et al. vs. Thompson, 263 U. S. 197 and in Webb vs. O'Brien, 263 U. S. at 313, but in each of those cases an interest in the real estate had not yet been acquired by the alien. In the first of the last cited decisions it is also stated, at page 212:

"* * * and it is alleged that the defendant, as Attorney General, has threatened to and will * * * if they enter into such lease, * * * prosecute the appellants criminally for violation of the act; that the act is so drastic and the penalties attached to its violation are so great that neither of the appellants may make the lease even to test the constitutionality of the act, and that, unless the court shall determine its validity in this suit, the appellants will be compelled to submit to it, whether valid or invalid, and thereby will be deprived of their property without due process of law and denied the equal protection of the laws."

There is no allegation in the Complaint now before the Court in any way equivalent to the above. The Motion for an Interlocutory Injunction is denied. The Defendant's Motion to Dismiss the Bill of Complaint is granted.

Frank S. Dietrich, Circuit Judge. Geo. M. Bourquin, District Judge. Edward E. Cushman, District Judge.

[fol. 59] [File endorsement omitted.]

[fols. 60-65] Petition for Rehearing covering six pages, filed November 2, 1929, omitted from this print. It was denied and nothing more by order November 23, 1929.

[fol. 66] IN UNITED STATES DISTRICT COURT

ORDER DENYING REHEARING—Filed Nov. 23, 1929

The petition of the Plaintiff for a re-hearing filed herein is denied.

Frank S. Dietrich, U. S. Circuit Judge. Geo. M. Bourquin, U. S. District Judge. Edward E. Cushman, U. S. District Judge.

[File endorsement omitted.]

[fol. 67] IN UNITED STATES DISTRICT COURT

JUDGMENT AND DECREE OF DISMISSAL—Filed Dec. 28, 1929

This matter having heretofore come regularly on for hearing before Hon. Frank S. Dietrich, circuit judge, Hon. George M. Bourquin and Hon. Edward E. Cushman, district judges, upon motion of plaintiff for an interlocutory injunction and the motion of defendants to dismiss the bill of complaint, and the court having heard the argument of counsel and having heretofore entered its memorandum opinion herein and having denied the plaintiff's petition for rehearing, and being now fully advised in the premises, in accordance with said memorandum decision, and upon the grounds that the court has no jurisdiction of this action because it appears from the complaint herein that plaintiff has a plain, adequate and complete remedy at law in the premises, it is

Ordered, adjudged and decreed (1) that plaintiff's motion for an interlocutory injunction be and the same hereby is denied; (2) that defendant's motion to dismiss the bill of complain- be and the same hereby is granted; (3) that this action be and the same hereby is dismissed; and (4) that defendants do have and recover of and from plaintiff their costs to be hereinafter taxed.

Done in open court this — day of December, 1929.

Frank S. Dietrich, Circuit Judge. Geo. M. Bourquin, District Judge. Edward E. Cushman, District Judge.

O. K. as to form. O. C. Moore.

[File endorsement omitted.]

[fol. 68] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Feb. 4, 1930

Comes now the Northport Power and Light Company, a corporation, plaintiff in said cause, and files the following Assignment of Errors on which it will rely on its appeal from the judgment and decree filed and entered in the above cause on the 28th day of December, 1929.

I

The court erred in denying the motion of plaintiff, Northport Power and Light Company, for an interlocutory injunction.

II

The court erred in not granting and in refusing to grant the motion of plaintiff, the said Northport Power and Light Company, for an interlocutory injunction.

III

The court erred in granting defendant's motion to dismiss the bill of complaint.

IV

The court erred in dismissing said above entitled cause.

V

The court erred in awarding judgment to defendants for their costs in said cause.

VI

The court erred in deciding and holding that plaintiff had and has a plain, adequate and complete remedy at law.

[fol. 69] VII

The court erred in holding that it had no jurisdiction of this action.

VIII

The court erred in declining to exercise jurisdiction in and over said cause.

IX

The court erred in refusing to hold and declare Chapter 50 of the 1921 Session Acts of the State of Washington, ineffective, inoperative, inapplicable and void in so far as by its terms said statute may apply or be thought to apply to or restrict or limit the rights and interests of plaintiff alleged and described in the complaint, as and because in conflict with (a) the Due Process Clause, Sec. III; (b) the Equal Protection Clause, Sec. XII; and (c) the Contract Clause, Sec. XXIII of Art. I of the Constitution of the State of Washington.

X

The court erred in not holding and in refusing to hold and decide that the threatened action and legal proceedings by defendants for the escheat and forfeiture of the properties, rights and interests of plaintiff, as alleged in the complaint, would be in violation of that provision of Sec. 33, Art. II of the Constitution of the State of Washington, excepting from the general provision of said section against alien ownership the necessary land for mills and machinery to be used in the development and manufacture of products from alien owned lands containing valuable minerals, metals, iron, coal or fire clay.

XI

The court erred in refusing to hold and declare Sec. 33 of Art. II of the Constitution of the State of Washington, ineffective, inoperative, inapplicable and void in so far as by its terms said section may apply or be thought to apply to [fol. 70] or restrict or limit the rights and interests of plaintiff alleged and described in the complaint, as and because in conflict with (a) the Commerce Clause, Sec. VIII, Art. I; (b) the Contract Clause, Sec. X, Art. I; (c) the Due

Process Clause of Sec. I of the 14th Amendment; and (d) the Equal Protection Clause of Sec. I of the 14th Amendment to the Constitution of the United States.

XII

The court erred in refusing to hold and declare Chapter 50 of the 1921 Session Acts of the State of Washington ineffective, inoperative, inapplicable and void in so far as by its terms said statute may apply or be thought to apply to or restrict or limit the rights and interests of plaintiff alleged and described in the complaint, as and because in conflict with, (a) the Commerce Clause, Sec. VIII, Art. I; (b) the Contract Clause, Sec. X, Art. I; (c) the Due Process Clause of Sec. I of the 14th Amendment; and (d) the Equal Protection Clause of Sec. I of the 14th Amendment to the Constitution of the United States.

XIII

The court erred in refusing to hold and declare Sec. 33 of Art. II of the Constitution of the State of Washington ineffective, inoperative, inapplicable and void in so far as by its term said section may apply or be thought to apply to or restrict or limit the rights and interests of plaintiff alleged and described in the complaint, as and because in conflict with the 1815 Commerce Treaty between the United States and Great Britain, as extended and continued by the Treaty of 1827.

XIV

The court erred in refusing to hold and declare Chapter 50 of the 1921 Session Acts of the State of Washington ineffective, inoperative, inapplicable and void in so far as by its terms said section may apply or be thought to apply to [fol. 71] or restrict or limit the rights and interests of plaintiff alleged and described in the complaint, as and because in conflict with the 1815 Commerce Treaty between the United States and Great Britain, as extended and continued by the Treaty of 1827.

W. Lon Johnson and O. C. Moore, Solicitors for Plaintiff.

[File endorsement omitted.]

[fol. 72] IN UNITED STATES DISTRICT COURT

PETITION FOR ALLOWANCE OF APPEAL—Filed Feb. 4, 1930

The above named, Northport Power and Light Company, a corporation, feeling itself aggrieved by the judgment and decree of dismissal filed and entered in the above entitled cause on the 28th day of December, 1929, (1) denying the motion of said Northport Power and Light Company for an interlocutory injunction in said cause; (2) granting defendants' motion to dismiss the bill of complaint; (3) dismissing the above entitled cause; and (4) awarding judgment to defendants for their costs herein, does hereby appeal from said judgment and decree to the Supreme Court of the United States and prays that this its appeal may be allowed for the reasons specified in the assignment of errors filed herewith, and that a transcript of the record and proceedings in said cause and all things concerning the same upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herein filed by said Northport Power and Light Company may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal to be made.

W. Lon Johnson and O. C. Moore, Solicitors for Petitioner.

[fol. 73] [File endorsement omitted.]

[fol. 74] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF BOND ON APPEAL—Filed Feb. 4, 1930

On reading the petition of the above named plaintiff in the above entitled cause, for the allowance of an appeal to the Supreme Court of the United States from the judgment and decree filed and entered in said cause on December 28,

1929, (1) denying the motion of plaintiff for an interlocutory injunction in said cause; (2) granting defendant's motion to dismiss the bill of complaint; (3) dismissing the above entitled cause; and (4) awarding judgment to defendants for their costs herein, it is ordered that the appeal be and is hereby allowed and it is further ordered that the plaintiff execute and file in the office of the Clerk of the above named court, a bond on appeal, conditioned according to law, in the sum of two hundred fifty no/100 dollars, with good and sufficient surety to be approved by the undersigned.

Done in open court this 4th day of February, 1930.

Edward E. Cushman, Judge.

[File endorsement omitted.]

[fols. 75 & 76] Bond on appeal for $250.00, approved and filed February 5, 1930, omitted in printing.

[fols. 77 & 78] Citation, in usual form, showing service on John Dunbar and Jno. A. Homer, filed February 5, 1930, omitted in printing.

[fol. 79] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD ON APPEAL—Filed Feb. 5, 1930

To the Clerk of the above-entitled Court:

Please make and certify an appeal to the Supreme Court of the United States a record which includes the following files, to-wit:

1. Bill of Complaint and attached Exhibits.
2. Motion for Injunction.
3. Notice of Motion for Injunction.
4. Temporary restraining order.
5. Subpœna and Marshal's return thereto.
6. Motion of Defendant's to Dismiss Bill of Complaint.
7. Opinion filed October 14, 1929, on plaintiff's applica-

tion for interlocutory injunction and defendant's motion to dismiss.

8. Petition for re-hearing.

9. Order denying petition for re-hearing.

10. Judgment and decree denying interlocutory injunction and dismissing the bill of complaint.

11. Assignment of errors.

12. Petition for allowance of appeal.

13. Order allowing appeal and fixing amount of bond on appeal.

14. Bond on appeal.

15. Citation.

16. Acceptance of Service.

17. This præcipe with acceptance of service thereof.

W. Lon Johnson and O. C. Moore, Solicitors for Plaintiff.

[File endorsement omitted.]

[fols. 80 & 81] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 82] In Supreme Court of the United States

Statement of Points Relied Upon and Designation to Print Entire Record—Filed April 4, 1930

I

In compliance with Rule 13, Paragraph 9, of this Court, appellant hereby adopts and designates the Assignments of Error filed in and on its behalf in the District Court, as and for a definite statement of the points upon which it intends to rely on said appeal in this Court.

II

Appellant hereby designates the entire record transmitted to this Court from the District Court as necessary

for consideration as the points on which it intends to rely in this Court and requests that same be printed.

W. Lon Johnson and O. C. Moore, Solicitors for Appellant.

Service of the above statement, by delivery of a copy thereof, hereby admitted this 25 day of March, A. D. 1930.

John H. Dunbar, John A. Homer, Solicitors for Defendants and Appellees.

[fols. 83-86] [File endorsement omitted.]

Endorsed on cover: File No. 34,894. W. Washington D. C. U. S. Term No. 763. Northport Power and Light Company, appellant, vs. Roland H. Hartley, as Governor of the State of Washington, and John H. Dunbar, as Attorney General of the State of Washington. Filed March 26, 1930. File No. 34,894.

FILE COPY

FILED
APR 15 1930
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1929

NORTHPORT POWER & LIGHT COMPANY, a corporation, *Appellant*,
vs.
ROLAND H. HARTLEY, as Governor of the State of Washington, and JOHN H. DUNBAR, as Attorney General of the State of Washington, *Appellees*.

No. 66

APPEAL FROM JUDGMENT AND DECREE OF UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION, DENYING INTERLOCUTORY INJUNCTION AND DISMISSING BILL OF COMPLAINT.

STATEMENT OF APPELLANT UNDER RULE 12, REVISED RULES.

W. LON JOHNSON,
Colville, Washington,
O. C. MOORE,
Spokane, Washington,
Solicitors for Appellant.

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1929

NORTHPORT POWER & LIGHT COMPANY, a corporation, *Appellant*,

vs.

ROLAND H. HARTLEY, as Governor of the State of Washington, and JOHN H. DUNBAR, as Attorney General of the State of Washington, *Appellees*.

No. 763

APPEAL FROM JUDGMENT AND DECREE OF UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION, DENYING INTERLOCUTORY INJUNCTION AND DISMISSING BILL OF COMPLAINT.

STATEMENT OF APPELLANT UNDER RULE 12, REVISED RULES.

W. LON JOHNSON,
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O. C. MOORE,
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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1929

NORTHPORT POWER & LIGHT COMPANY, a corporation, *Appellant*,

vs.

ROLAND H. HARTLEY, as Governor of the State of Washington, and JOHN H. DUNBAR, as Attorney General of the State of Washington, *Appellees*.

No. 763

APPEAL FROM JUDGMENT AND DECREE OF UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION, DENYING INTERLOCUTORY INJUNCTION AND DISMISSING BILL OF COMPLAINT.

STATEMENT OF APPELLANT UNDER RULE 12, REVISED RULES.

In compliance with Rule 12, of the Revised Rules, appellant presents herewith its statement of basis of jurisdiction for review by the Supreme Court on appeal of the judgment and decree below.

JURISDICTION.

(a) The jurisdiction of this Court is invoked under Sec. 266 of the Judicial Code, U. S. C., Title 28, Sec. 380, for the review of the judgment and decree of a three judge court, assembled pursuant to said statute, whereby an interlocutory injunction was denied and the suit dismissed.

JUDGMENT AND PROCEEDINGS BELOW.

(b) The judgment and decree, a review of which is sought, was entered on December 28th, 1929 (Rec., p 67), and the application for the appeal was presented and allowed on the 4th day of February, 1930 (Rec., p 74).

NATURE OF CASE.

(c) It was sought by this suit to restrain the Governor and Attorney General of the State of Washington from instituting and prosecuting escheat and forfeiture proceedings under Sec. 33, Art. 2, of the Constitution of the State of Washington, and Sec. 1, Chapter 50 of 1921 Session Laws of the State of Washington; Sec. 10582, Remington's Compiled Statutes, Vol. 3.

The bill of complaint (Rec., p 2) alleges, that appellant, Northport Power & Light Company, is a corpora-

tion under the laws of the State of Washington and that the majority of its issued stock is owned by the West Kootenay Power & Light Company, Ltd., of Canada, an alien corporation; that appellant is engaged in the transmission of electrical current, purchased in the Dominion of Canada, from a point in the Province of British Columbia across the International Boundary Line into the State of Washington, where it is sold and distributed to the inhabitants of the Town of Northport in that State, pursuant to a franchise from said Town of Northport, and to other distributes in said State, also that it is engaged in the development of mining properties owned by it in Stevens County, Washington, in which development it requires and uses electrical energy; that plaintiff is and since the year 1917, has been the owner of certain right-of-way easements and franchises within the State of Washington on which are located its transmission lines and power station used in conveying electrical current, so purchased in and transmitted from the Dominion of Canada, across the International Boundary Line into the State of Washington for distribution and sale to consumers in that State, and that all of said easements and franchises are necessary instruments in the transmission of said electrical current in foreign commerce, and are necessary to the continuation of plaintiff's said business; that Art. 11, Sec. 33, of the Constitution of

the State of Washington purports by its terms to prohibit the ownership of lands by aliens, other than mineral and the necessary land for mills and machinery to be used in the development of mineral lands and the manufacture of products therefrom, and by its terms makes every corporation, the majority of the capital stock of which is owned by aliens, an alien for the purposes of such prohibition; that in 1921 the legislature of the State of Washington enacted Chapter 50 of the 1921 Session Acts of that State, Sec. 10581 et sec. of Remington's Compiled Statutes of the State of Washington, same being in the nature of an enforcement act and adding by its terms to the inhibitions against alien ownership contained in the Constitution.

Sec. 33, of Art. II, of the Constitution of Washington is as follows:

> "The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this State, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly or in trust for such alien shall be void; Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal or fire-clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital

stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition."

The complaint also alleges that because of the fact that the majority of the capital stock of plaintiff corporation is alien owned, defendants, as Governor and Attorney-General respectively of the State of Washington, have threatened to enforce and unless restrained by order of Court will enforce against plaintiff the aforesaid constitutional and statutory provisions of the State of Washington, and will forfeit and escheat and attempt to forfeit and escheat the aforesaid easements and leaseholds upon which are located plaintiff's transmission lines and power station and all of the improvements thereon, likewise its franchise, to the State of Washington, and that they will institute and prosecute legal proceedings in the Courts of Washington for that purpose; that in consequence, unless restrained by decree of the Court, plaintiff's business and the foreign commerce in which it is engaged will be irreparably injured, damaged and destroyed.

The complaint further alleges that said provision of the Constitution of Washington and said Act of the legislature, and the enforcement thereof by defendants against this plaintiff and its said property, are and would be in contravention of and repugnant to Clause 3, Sec. 8, Art. I, of the Constitution of the United States, empowering Congress to regulate commerce

with foreign nations; likewise, Sec. 10, Art. I of the Constitution providing that

> "* * * no state shall * * * pass any laws * * * impairing obligations of contracts;"

likewise, the Due Process and Equal Protection Clauses Sec. 1 of the 14th Amendment, to the Federal Constitution; likewise, the 1815 Commerce Treaty between the United States and Great Britain as extended and continued by the Treaty of 1827; also, that plaintiff has no adequate remedy at law.

The complaint also alleges and claims the protection of the following provisions of Art. I of the Constitution of the State of Washington, viz., Sec. 3, providing that no person shall be deprived of life, liberty or property without due process of law; Sec. 12, providing that

> "No law shall be passed granting to any citizen, class of citizens, or corporations, other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporation";

and Sec. 23, inhibiting the enactment of any law impairing the obligation of contracts.

The issuance of a temporary restraining order and an interlocutory injunction, and that on final hearing same be made perpetual, is prayed by the complaint.

A temporary restraining order was issued, returnable on the 16th day of September, 1929 (Rec., p 46). On the return day a motion to dismiss on the following grounds:

1. Said bill of complaint does not state any matters of equity entitling the plaintiff to the relief prayed for;

2. Said bill of complaint does not state facts sufficient to entitle plaintiff to any relief against these defendants or either of them;

3. The plaintiff has a plain, adequate and complete remedy at law;

was interposed by defendants (Rec., p 50), and argued to the Court.

On October 14th, 1929, an opinion was filed (Rec., p 51; 35 Fed. (2d) 199), denying the motion for an interlocutory injunction and granting defendant's motion to dismiss the bill of complaint, on the ground that it had not been made to appear that in the threatened proceeding for the enforcement of the aforesaid provision of the Constitution of Washington, and subsequent statute, plaintiff would not be afforded an adequate remedy for the protection of its rights.

Plaintiff thereafter petitioned for a rehearing (Rec., p 60), on the denial of which (Rec., p 66), on December 28th, 1929, a judgment and decree was entered

(Rec., p 67), denying the motion for an interlocutory injunction and dismissing said cause, with costs to defendants, as stated therein,

> "* * * upon the ground that the court has no jurisdiction of this action because it appears from the complaint herein that plaintiff has a plain, adequate and complete remedy at law in the premises * * *."

From said judgment and decree this appeal is prosecuted. (Rec., p 72.)

CASES SUSTAINING JURISDICTION.

(d) The following cases are believed to sustain the jurisdiction of this Court.

Smith vs. Wilson, 273 U. S. 388, 71 L. Ed. 699;

Clark vs. Poor, 274 U. S. 554, 71 L. Ed. 1199;

Lawrence vs. St. Louis-San Francisco Ry. Co., 274 U. S. 588, 71 L. Ed. 1219;

Twist vs. Prairie Oil & Gas Co., 274 U. S. 684, 71 L. Ed. 1297;

Inter-State Busses Corp. vs. Blodgett, 276 U. S. 245, 72 L. Ed. 551;

Foster-Fountain Pack. Co. vs. Haydel, 278 U. S. 1, 73 L. Ed. 1;

Herkness vs. Irion, 278 U. S. 92, 73 L. Ed. 198;

Ohio Oil Co. vs. Conway, 279 U. S. 813, 73 L. Ed. 972.

Respectfully submitted,

W. LON JOHNSON,

O. C. MOORE,

Solicitors for Appellant.